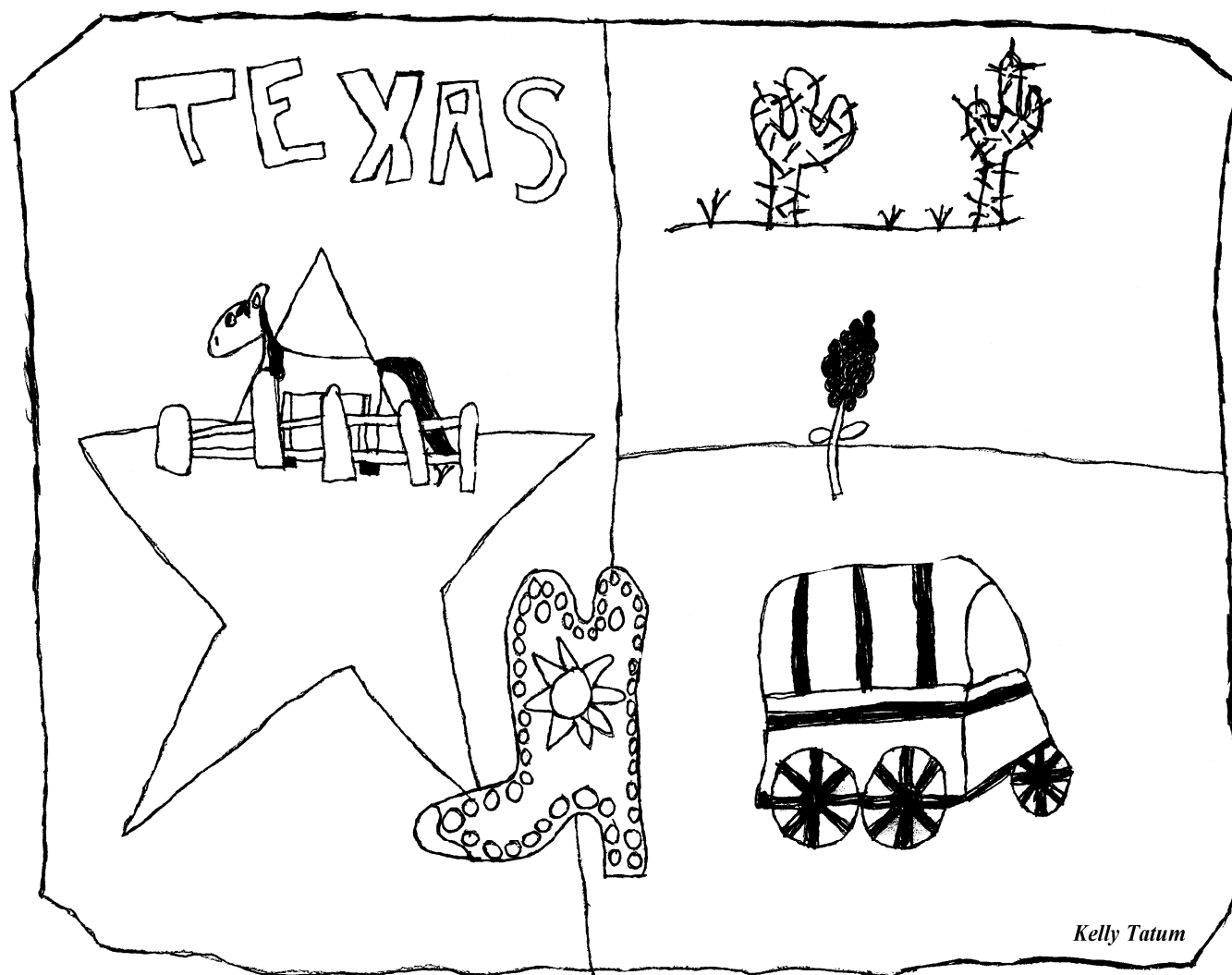

TEXAS REGISTER

Volume 34 Number 38

September 18, 2009

Pages 6381 - 6478



School children's artwork is used to decorate the front cover and blank filler pages of the *Texas Register*. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but important facet of state government.

The artwork featured on the front cover is chosen at random. Inside each issue, the artwork is published on what would otherwise be blank pages in the *Texas Register*. These blank pages are caused by the production process used to print the *Texas Register*.

Texas Register, (ISSN 0362-4781, USPS 120-090), is published weekly (52 times per year) for \$211.00 (\$311.00 for first class mail delivery) by LexisNexis Matthew Bender & Co., Inc., 1275 Broadway, Albany, N.Y. 12204-2694.

Material in the ***Texas Register*** is the property of the State of Texas. However, it may be copied, reproduced, or republished by any person without permission of the ***Texas Register*** director, provided no such republication shall bear the legend ***Texas Register*** or "Official" without the written permission of the director.

The ***Texas Register*** is published under the Government Code, Title 10, Chapter 2002. Periodicals Postage Paid at Albany, N.Y. and at additional mailing offices.

POSTMASTER: Send address changes to the ***Texas Register***, 136 Carlin Rd., Conklin, N.Y. 13748-1531.



a section of the
Office of the Secretary of State
P.O. Box 13824
Austin, TX 78711-3824
(512) 463-5561
FAX (512) 463-5569

<http://www.sos.state.tx.us>
register@sos.state.tx.us

Secretary of State –
Hope Andrade

Director –
Dan Procter

Staff
Leti Benavides
Dana Blanton
Kris Hogan
Belinda Kirk
Roberta Knight
Jill S. Ledbetter
Juanita Ledesma
Preeti Marasini

IN THIS ISSUE

ATTORNEY GENERAL

Requests for Opinion	6387
Opinions	6387

EMERGENCY RULES

TEXAS MEDICAL BOARD

REHABILITATION ORDERS

22 TAC §180.1	6389
---------------------	------

TEXAS PHYSICIAN HEALTH PROGRAM AND REHABILITATION ORDERS

22 TAC §§180.1 - 180.3, 180.7	6389
-------------------------------------	------

PROPOSED RULES

OFFICE OF THE SECRETARY OF STATE

ELECTIONS

1 TAC §81.40	6393
--------------------	------

TEXAS JUDICIAL COUNCIL

REPORTING REQUIREMENTS

1 TAC §§171.2, 171.7, 171.8	6395
-----------------------------------	------

TEXAS DEPARTMENT OF AGRICULTURE

QUARANTINES AND NOXIOUS AND INVASIVE PLANTS

4 TAC §19.3	6396
-------------------	------

TEXAS DEPARTMENT OF LICENSING AND REGULATION

ELECTRICIANS

16 TAC §§73.10, 73.20 - 73.24, 73.26, 73.28, 73.40, 73.51 - 73.54, 73.60, 73.65, 73.70, 73.80, 73.90, 73.91	6399
--	------

16 TAC §§73.51 - 73.54, 73.60	6406
-------------------------------------	------

TEXAS BOARD OF CHIROPRACTIC EXAMINERS

APPLICATIONS AND APPLICANTS

22 TAC §71.17	6407
---------------------	------

RULES OF PRACTICE

22 TAC §75.17	6407
---------------------	------

TEXAS MEDICAL BOARD

REHABILITATION ORDERS

22 TAC §180.1	6409
---------------------	------

TEXAS PHYSICIAN HEALTH PROGRAM AND REHABILITATION ORDERS

22 TAC §§180.1 - 180.3, 180.7	6409
-------------------------------------	------

TEXAS STATE BOARD OF EXAMINERS OF PSYCHOLOGISTS

APPLICATIONS AND EXAMINATIONS

22 TAC §463.7	6412
---------------------	------

RULES OF PRACTICE

22 TAC §465.2	6413
---------------------	------

COMPLAINTS AND ENFORCEMENT

22 TAC §469.7	6413
---------------------	------

ADMINISTRATIVE PROCEDURE

22 TAC §470.2	6414
---------------------	------

FEES

22 TAC §473.5	6415
---------------------	------

GENERAL LAND OFFICE

EXPLORATION AND DEVELOPMENT OF STATE MINERALS OTHER THAN OIL AND GAS

31 TAC §§10.1 - 10.9	6415
----------------------------	------

LAND RESOURCES

31 TAC §13.1, §13.3	6424
---------------------------	------

31 TAC §13.11	6427
---------------------	------

31 TAC §§13.12, 13.13, 13.17, 13.19	6428
---	------

TEXAS PARKS AND WILDLIFE DEPARTMENT

LAW ENFORCEMENT

31 TAC §§55.111 - 55.113, 55.116	6431
--	------

COMPTROLLER OF PUBLIC ACCOUNTS

SPORTS AND EVENTS TRUST FUND

34 TAC §§2.100 - 2.105	6433
------------------------------	------

34 TAC §§2.200 - 2.204	6436
------------------------------	------

TAX ADMINISTRATION

34 TAC §3.161	6438
---------------------	------

34 TAC §3.365	6440
---------------------	------

34 TAC §3.432	6441
---------------------	------

34 TAC §3.442	6442
---------------------	------

TEXAS BOARD OF PARDONS AND PAROLES

MEMORANDUM OF UNDERSTANDING AND BOARD POLICY STATEMENTS

37 TAC §150.55	6443
----------------------	------

ADOPTED RULES

TEXAS COMMISSION ON THE ARTS

AGENCY PROCEDURES

13 TAC §§31.1 - 31.5, 31.8, 31.10	6445
---	------

13 TAC §31.6, §31.9	6445
---------------------------	------

MEMORANDA OF UNDERSTANDING

13 TAC §32.1	6445
--------------------	------

A GUIDE TO PROGRAMS AND SERVICES	
13 TAC §35.1	6446
APPLICATION FORMS AND INSTRUCTIONS FOR FINANCIAL ASSISTANCE	
13 TAC §§37.22, 37.24, 37.28, 37.29	6446
RAILROAD COMMISSION OF TEXAS	
PIPELINE SAFETY REGULATIONS	
16 TAC §8.201	6446
ALTERNATIVE FUELS RESEARCH AND EDUCATION DIVISION	
16 TAC §15.115	6447
TEXAS BOARD OF CHIROPRACTIC EXAMINERS	
APPLICATIONS AND APPLICANTS	
22 TAC §71.15	6448
FORMAL SOAH PROCEEDINGS	
22 TAC §76.21	6448
TEXAS MEDICAL BOARD	
LICENSURE	
22 TAC §163.4	6449
ACUPUNCTURE	
22 TAC §183.14	6449
TEXAS STATE BOARD OF EXAMINERS OF PSYCHOLOGISTS	
ADMINISTRATIVE PROCEDURE	
22 TAC §470.10	6449
FEES	
22 TAC §473.3	6450
RULE REVIEW	
Proposed Rule Reviews	
Office of the Governor	6451
Texas Board of Pardons and Paroles	6451
Adopted Rule Reviews	
Texas Board of Nursing	6451
TABLES AND GRAPHICS	
.....	6453
IN ADDITION	
Ark-Tex Council of Governments	
Request for Proposals	6455
Office of the Attorney General	

Request for Applications for the Sexual Assault Prevention and Crisis Services - Federal Program	6455
Request for Applications for the Sexual Assault Prevention and Crisis Services - State Program	6457
Brazos Valley Council of Governments	
Request for Proposals for Custodial Supplies and Equipment	6458
Comptroller of Public Accounts	
Notice of Contract Amendment and Renewal	6458
Notice of Request for Applications	6459
Office of Consumer Credit Commissioner	
Notice of Rate Ceilings	6459
Texas Education Agency	
Request for Applications Concerning Early College High School Grant, Cycle 4	6459
Texas Commission on Environmental Quality	
Agreed Orders	6460
Notice of Costs to Administer the Voluntary Cleanup Program	6463
Notice of Water Quality Applications	6464
State Superfund Registry	6464
General Land Office	
Notice of Invitation for Offer for Renewal of Major Consulting Services	6466
Texas Health and Human Services Commission	
Notice of Adopted Reimbursement Rates	6466
Department of State Health Services	
Licensing Actions for Radioactive Materials	6467
Texas Higher Education Coordinating Board	
Request for Proposals: To Support Centers for Teacher Education at Component Institutions of the Texas Association of Developing Colleges	6470
Texas Department of Insurance	
Company Licensing	6471
Texas Lottery Commission	
Instant Game Number 1221 "\$100,000 Super 7's"	6471
North East Texas Regional Mobility Authority	
Notice of Availability of Request for Qualifications for Development of the Toll 49 Project Segment 3B	6475
Public Utility Commission of Texas	
Public Notice of Workshop	6476
Texas Department of Transportation	
Notice of Public Hearing on Proposed Restrictions on Use of State Highway - IH 35, Bell and Williamson Counties	6476

Public Notice - Disadvantaged Business Enterprise Goals, Fiscal Year
2010, Date of Notice September 18, 2009.....6476

Open Meetings

Statewide agencies and regional agencies that extend into four or more counties post meeting notices with the Secretary of State.

Meeting agendas are available on the *Texas Register's* Internet site:
<http://www.sos.state.tx.us/open/index.shtml>

Members of the public also may view these notices during regular office hours from a computer terminal in the lobby of the James Earl Rudder Building, 1019 Brazos (corner of 11th Street and Brazos) Austin, Texas. To request a copy by telephone, please call 512-463-5561. Or request a copy by email: register@sos.state.tx.us

For items ***not*** available here, contact the agency directly. Items not found here:

- minutes of meetings
- agendas for local government bodies and regional agencies that extend into fewer than four counties
- legislative meetings not subject to the open meetings law

The Office of the Attorney General offers information about the open meetings law, including Frequently Asked Questions, the *Open Meetings Act Handbook*, and Open Meetings Opinions.

<http://www.oag.state.tx.us/opinopen/opengovt.shtml>

The Attorney General's Open Government Hotline is 512-478-OPEN (478-6736) or toll-free at (877) OPEN TEX (673-6839).

Additional information about state government may be found here:
<http://www.state.tx.us/>

...

Meeting Accessibility. Under the Americans with Disabilities Act, an individual with a disability must have equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or Braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting notice several days before the meeting by mail, telephone, or RELAY Texas. TTY: 7-1-1.

THE ATTORNEY GENERAL

The *Texas Register* publishes summaries of the following:
Requests for Opinions, Opinions, Open Records Decisions.

An index to the full text of these documents is available from
the Attorney General's Internet site <http://www.oag.state.tx.us>.

Telephone: 512-936-1730. For information about pending requests for opinions, telephone 512-463-2110.

An Attorney General Opinion is a written interpretation of existing law. The Attorney General writes opinions as part of his responsibility to act as legal counsel for the State of Texas. Opinions are written only at the request of certain state officials. The Texas Government Code indicates to whom the Attorney General may provide a legal opinion. He may not write legal opinions for private individuals or for any officials other than those specified by statute. (Listing of authorized requestors: <http://www.oag.state.tx.us/opinopen/opinhome.shtml>.)

Requests for Opinion

RQ-0816-GA

Requestor:

The Honorable Lynda K. Russell
123rd Judicial District Attorney, Shelby County
200 San Augustine Street, Suite #12
Center, Texas 75935

Re: Whether a district attorney may use asset forfeiture funds to pay for her defense in a federal civil suit filed under 42 U.S.C.A. section 1983 (RQ-0816-GA)

Briefs requested by October 2, 2009

RQ-0817-GA

Requestor:

The Honorable Kip Averitt
Chair, Committee on Natural Resources
Texas State Senate
Post Office Box 12068
Austin, Texas 78711-2068

Re: Status of property located in more than one groundwater conservation district (RQ-0817-GA)

Briefs requested by October 5, 2009

For further information, please access the website at www.oag.state.tx.us or call the Opinion Committee at (512) 463-2110.

TRD-200903953
Stacey Napier
Deputy Attorney General
Office of the Attorney General
Filed: September 8, 2009



Opinions

Opinion No. GA-0737

The Honorable Elizabeth Murray-Kolb
Guadalupe County Attorney

101 East Court Street, Suite 104

Seguin, Texas 78155-5779

Re: Whether a municipality engaged in the process of annexing territory may use section 43.052(h)(1) of the Local Government Code under various circumstances (RQ-0745-GA)

S U M M A R Y

While the statute would benefit from legislative clarification, we conclude that section 43.052(h)(1) of the Local Government Code does not require that a residence be located on each tract of the area proposed for annexation. An annexation undertaken pursuant to section 43.052(h) is not void if the municipality fails to adopt a three-year annexation plan. Whether a service plan requires a landowner to fund a capital improvement in a manner inconsistent with Local Government Code chapter 395 requires the resolution of questions of fact that cannot be determined in an attorney general opinion.

Opinion No. GA-0738

The Honorable Edmund Kuempel, Chair
Committee on Licensing & Administrative Procedures
Texas House of Representatives
Post Office Box 2910
Austin, Texas 78768-2910

Re: Whether an individual may simultaneously serve as a member of a school district board of trustees and as a principal of a disciplinary alternative program that serves several school districts (RQ-0788-GA)

S U M M A R Y

In the particular circumstances you provide, neither article XVI, section 40, Texas Constitution, nor the common-law doctrine of incompatibility prohibits an individual from simultaneously serving as a principal of a disciplinary alternative education program campus that serves several school districts as part of a cooperative arrangement while simultaneously serving on the board of trustees of a member district. This opinion could change under different circumstances wherein the participating school districts had supervisory authority over the disciplinary alternative education program campus.

Opinion No. GA-0739

The Honorable Richard R. Hicks III
Caldwell County Criminal District Attorney
Post Office Box 869

Lockhart, Texas 78644

Re: Whether premiums paid for group health insurance by the Caldwell County Employee Benefit Trust are subject to insurance premium taxes under section 222.002 of the Insurance Code (RQ-0787-GA)

S U M M A R Y

Subsection 222.002(c)(5)(A) of the Insurance Code creates a tax exemption for certain premiums paid on group health, accident, and life insurance policies by a single nonprofit trust established to provide coverage for employees of municipalities, counties, or hospital districts. The Legislature has not defined the term single nonprofit trust, and the Comptroller of Public Accounts, as the agency charged with administering and enforcing the premium tax statute, has interpreted the term to mean a trust established for the single purpose of paying insurance premiums. Although the Comptroller's construction of this ambiguous phrase is reasonable, the Comptroller is too narrowly defining sin-

gle purpose such that the trust can only pay insurance premiums. As long as the trust funds are used to further the purpose of providing insurance coverage for employees and their dependents, their use is not contrary to the limitations placed on a trust created under subsection 222.002(c)(5)(A).

For further information, please access the website at www.oag.state.tx.us or call the Opinion Committee at (512) 463-2110.

TRD-200903955

Stacey Napier

Deputy Attorney General

Office of the Attorney General

Filed: September 8, 2009

◆ ◆ ◆

EMERGENCY RULES

Emergency Rules include new rules, amendments to existing rules, and the repeals of existing rules. A state agency may adopt an emergency rule without prior notice or hearing if the agency finds that an imminent peril to the public health, safety, or welfare, or a requirement of state or federal law, requires adoption of a rule on fewer than 30 days' notice. An emergency rule may be effective for not longer than 120 days and may be renewed once for not longer than 60 days (Government Code, §2001.034).

TITLE 22. EXAMINING BOARDS

PART 9. TEXAS MEDICAL BOARD

CHAPTER 180. REHABILITATION ORDERS

The Texas Medical Board (Board) adopts on an emergency basis the repeal of §180.1, concerning Rehabilitation Orders, and adds new sections to Chapter 180, concerning Texas Physician Health Program and Rehabilitation Orders, §§180.1 - 180.3 and 180.7.

The repeal of §180.1 and the addition of new §§180.1, 180.2, 180.3 and 180.7 are adopted as emergency rules under §2001.034 of the Government Code due to the requirements of state law, specifically passage of SB 1331 of the 81st Legislative Session that went into effect September 1, 2009.

Elsewhere in this issue of the *Texas Register*, the Board contemporaneously proposes the repeal and replacement of Chapter 180 on a permanent basis.

The repeal of §180.1, relating to Rehabilitation Orders, repeals this provision.

New §180.1, concerning Purpose, establishes the statutory authority and the purpose for the Texas Physician Health Program and the use of rehabilitation orders.

New §180.2, concerning Definitions, establishes definitions that pertain to the Texas Physician Health Program.

New §180.3, concerning Texas Physician Health Program, establishes the qualifications and responsibilities for the governing board, physician health advisory committee, and medical director of the Texas Physician Health Program.

New §180.7, concerning Rehabilitation Orders, provides that rehabilitation orders entered into on or before January 1, 2010 shall be subject to all laws that existed immediately before that date as they relate to rehabilitation orders.

22 TAC §180.1

(Editor's note: The text of the following section adopted for repeal on an emergency basis will not be published. The section may be examined in the offices of the Texas Medical Board or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is adopted on an emergency basis under §2001.034 of the Government Code.

§180.1. Rehabilitation Orders.

This agency hereby certifies that the emergency adoption has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 1, 2009.

TRD-200903877

Mari Robinson, J.D.

Interim Executive Director

Texas Medical Board

Effective Date: September 1, 2009

Expiration Date: December 29, 2009

For further information, please call: (512) 305-7016



CHAPTER 180. TEXAS PHYSICIAN HEALTH PROGRAM AND REHABILITATION ORDERS

22 TAC §§180.1 - 180.3, 180.7

The new sections are adopted on an emergency basis under §2001.034 of the Government Code.

§180.1. Purpose.

Purpose of chapter. The purpose of this chapter is to establish the Texas Physician Health Program for the purpose of encouraging the wellness of program participants pursuant to the Medical Practice Act ("Act"), Texas Occupations Code Annotated §§167.001 - 167.011.

§180.2. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Acupuncture Board--Texas State Board of Acupuncture Examiners.

(2) Committee--the Physician Health and Rehabilitation Advisory Committee.

(3) Governing board--the governing board of the program.

(4) Medical Board--the Texas Medical Board.

(5) Medical director--a physician licensed by the board who has expertise in a field of medicine relating to disorders commonly affecting physicians or physician assistants, including substance abuse disorders, and who provides clinical and policy oversight for the program.

(6) PA Board--the Texas Physician Assistant Board.

(7) Program--the Texas Physician Health Program.

(8) Program participant--a physician, physician assistant, acupuncturist, or surgical assistant who is licensed or who has applied for licensure and who receives services under the program.

§180.3. Texas Physician Health Program.

(a) Governing Board.

(1) Appointments.

(A) The president of the Medical Board in consultation with the presiding chair of the PA Board, and with the advice of stakeholders, shall appoint 11 qualified individuals with good professional character to serve on the governing board of the program.

(B) The appointees shall include physicians, physician assistants, and other related professionals with experience addressing health conditions commonly found in the population of monitored licensees.

(C) The appointees shall include:

(i) six physicians actively licensed in Texas who are doctors of medicine (M.D.) and have been in practice for at least five years;

(ii) two physicians actively licensed in Texas who are doctors of osteopathic medicine (D.O.) and have been in practice for at least five years;

(iii) one physician assistant who is actively licensed by the PA Board and has been in practice for at least five years;

(iv) one other licensed mental health professional with appropriate experience; and

(v) one member of the public who meets the same requirements as public members of the Medical Board as provided under §152.003 of the Texas Occupations Code.

(D) Appointees shall serve staggered six-year terms and may be reappointed by the president after completion of a term.

(E) Appointees may not:

(i) serve on a county medical society committee on physician health and rehabilitation;

(ii) have patient populations that include program participants.

(F) An appointee may be removed if:

(i) grounds for removal exist under §152.006 of the Texas Occupations Code;

(ii) the appointee fails to meet the standards of professional conduct under §161.3 of this title (relating to Organization and Structure); or

(iii) the appointee does not otherwise meet the requirements of this chapter.

(G) If there is a vacancy on the governing board, the Medical Board president in consultation with the presiding chair of the PA Board and with the advice of stakeholders may appoint a new board member.

(H) The presiding officer of the Governing Board shall be appointed by the Medical Board president.

(2) Responsibilities of the Governing Board. The governing board shall:

(A) provide advice and counsel to the Medical Board; and

(B) establish policy and procedures for the operation and administration of the program.

(3) Conflicts of Interest. A governing board member should avoid conflicts of interest. If a conflict of interest should unintentionally occur, the governing board member should recuse himself

or herself from participating in any matter that could be affected by the conflict.

(b) Physician Health and Rehabilitation Advisory Committee.

(1) Appointments.

(A) The governing board shall appoint physicians and mental health care providers actively licensed in Texas with at least five years experience in disorders commonly affecting program participants to the Physician Health and Rehabilitation Advisory Committee.

(B) Appointees shall serve at the pleasure of the Governing Board.

(C) If there is a vacancy on the committee, the Governing Board with the advice of the president of the Medical Board and the presiding officer of the PA Board may appoint a new committee member.

(2) Responsibilities of the Committee. The committee shall provide opinions upon request of the governing board or program staff.

(3) Conflicts of Interest.

(A) A committee member should avoid conflicts of interest. If a conflict of interest should unintentionally occur, the committee member should recuse himself or herself from participating in any matter that could be affected by the conflict.

(B) A committee member must request to be recused in any decision relating to a program participant that the committee member had treated or is currently treating.

(c) Medical Director Qualifications. The medical director:

(1) serves at the pleasure of the Medical Board;

(2) must be licensed by the Medical Board;

(3) must have expertise in a field of medicine relating to disorders commonly affecting program participants; and

(4) may not treat or supervise a program participant.

§180.7. Rehabilitation Orders.

(a) Rehabilitation orders entered into on or before January 1, 2010, shall be governed by this section only.

(b) Purposes of rehabilitation orders.

(1) To provide an incentive to a licensee or applicant to seek early assistance with drug or alcohol-related problems or mental or physical conditions that present a potentially dangerous limitation or inability to practice medicine with reasonable skill and safety.

(2) To protect the public by requiring the impaired licensee or applicant to obtain treatment and/or limit or refrain from the practice of medicine while suffering from an impairment.

(c) Eligibility for rehabilitation order. The board may issue a rehabilitation order for a licensee or applicant, as a prerequisite for issuing a license, for the following reasons:

(1) intemperate use of drugs or alcohol directly resulting from habituation or addiction caused by medical care or treatment provided by a physician;

(2) the licensee or applicant self-reported intemperate use of drugs or alcohol as set out in subsection (f) of this section, and has not previously been the subject of a substance abuse-related order of the board;

(3) a court has determined that the licensee or applicant is of unsound mind;

(4) the licensee or applicant has an impairment as determined by a mental or physical examination; or

(5) an admission by the licensee or applicant of an illness or a physical or mental condition that limits or prevents the person's practice of medicine with reasonable skill and safety.

(d) Factors for board consideration in proposing a rehabilitation order.

(1) General. In determining whether to recommend a rehabilitation order to an otherwise eligible licensee or applicant, the board shall consider all relevant factors.

(2) Federal and state drug and alcohol laws. Absent a showing of good cause by the licensee or applicant, the board may not grant a rehabilitation order if any of the following factors exist:

(A) the licensee or applicant has been found guilty, pled guilty, or received deferred adjudication of any felony or misdemeanor related to the intemperate use of drugs or alcohol at issue;

(B) the licensee or applicant was required to or voluntarily surrendered his/her drug license(s) or certification(s) issued by the Federal Drug Enforcement Administration (DEA), Texas Department of Public Safety (DPS) or comparable authority of another state in connection with a criminal investigation related to the intemperate use of drugs or alcohol at issue; and

(C) the licensee's or applicant's intemperate use of drugs or alcohol led to a violation of Chapters 481 and 483 of the Texas Health and Safety Code or a violation of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. §801 et seq.).

(3) The licensee or applicant and board staff may present information to the Board's representatives relevant to whether any violation of the standard of care is a result of the intemperate use of drugs or alcohol. The Board's representatives may not recommend a confidential rehabilitation order if they determine that a violation of the standard of care was a result of the intemperate use of drugs or alcohol. The board shall have complete discretion to determine whether any violation of the standard of care was a result of the intemperate use of drugs or alcohol.

(4) Additional factors to be established by a licensee or applicant. Licensees or applicants otherwise eligible for a rehabilitation order should provide evidence of the following factors to be considered by the board prior to the board proposing a rehabilitation order:

(A) steps taken to prevent potential future harm to the public that may include a treatment and monitoring plan;

(B) existence of rehabilitative potential;

(C) a clinical diagnosis of a physical or mental condition and supporting medical records;

(D) that the licensee or applicant cooperated with board staff during the course of the investigation; and

(E) applicability of any other mitigating factors set forth in §190.15(b) of this title (relating to Aggravating and Mitigating Factors).

(5) Additional factors to be established by board staff. If applicable, board staff shall present evidence of the following factors to be considered by the board prior to the board proposing a rehabilitation order:

(A) intemperate use of drugs or alcohol by the licensee or applicant in a manner affecting the standard of care;

(B) a complaint alleging intemperate use of drugs or alcohol by the licensee or applicant in a manner affecting the standard of care has been received by the board, and the status of the investigation of the complaint;

(C) licensee or applicant caused harm to any individual or entity;

(D) licensee or applicant has a disciplinary history, including criminal convictions, disciplinary orders with board or other state medical boards, disciplinary actions by other state or federal regulatory agencies, and peer review actions by hospitals or medical societies;

(E) licensee or applicant inappropriately self-treated or self-prescribed;

(F) licensee or applicant violated provisions of the Act other than §§164.051(a)(4), (a)(5) and 164.052(a)(5);

(G) applicability of any other aggravating factors set forth in §190.15(a) of this title.

(e) Concurrent public agreed order. The board may approve a public agreed order that does not relate to standard of care violations to run concurrently with any confidential rehabilitation order, authorized by this section.

(f) Requirements for self-reports. To be eligible for a rehabilitation order based on a self-report of intemperate use of drugs or alcohol:

(1) the self-report must have been made to the board:

(A) within five years after the last commission of intemperate use of drugs or alcohol;

(B) before the filing of any criminal charges involving drugs or alcohol use; and

(C) before the board receives a complaint or other report of intemperate use;

(2) the licensee or applicant making the self-report has no prior board orders based on use of drugs or alcohol;

(3) the licensee or applicant has not committed a violation of the standard of care as a result of the intemperate use of drugs or alcohol;

(4) no valid complaint with regard to the licensee or applicant based on intemperate use of drugs or alcohol in a manner affecting the standard of care has been received by the board prior to the time the licensee or applicant signs the proposed rehabilitation order. If the board receives any complaint regarding the standard of care before the licensee or applicant signs the proposed rehabilitation order, the licensee or applicant is not eligible for a rehabilitation order unless the board makes a determination that the licensee or applicant did not violate the standard of care as a result of the intemperate use of drugs or alcohol;

(5) self-reports of intemperate use of drugs or alcohol by licensees or applicants must be made through a written statement by the licensee or applicant, or the authorized agent of the licensee or applicant, submitted to the board or board staff by mail, email, messenger, telefacsimile transmission, or hand-delivery. The self-report may be made through responses provided as part of an application for a license or writing submitted for purposes of licensure renewal; and

(6) the licensee or applicant must provide a complete self-report of the intemperate use of alcohol or drugs that includes, but is not limited to, the following information:

- (A) the approximate dates of intemperate use;
- (B) the extent of intemperate use;
- (C) the substance(s) used;
- (D) the method(s) of ingestion;

(E) all history of substance abuse treatment to include approximate dates of treatment and the specific locations where treatment was received; and

(F) a description of any incident that a reasonably prudent physician would believe could result in an allegation of the physician's violation of the standard of care that occurred during the time of intemperate use or, if no violation of the standard of care has occurred, a statement that no violation of the standard of care occurred during the time of intemperate use.

(g) Guidelines for determination of a mental or physical condition.

(1) Mental condition. Absent a showing of good cause, a licensee or applicant suffering from a mental condition should provide evidence to the board, including medical records, of a clinical diagnosis by a physician or mental health care provider of a condition listed under DSM-IV.

(2) Physical condition. Absent a showing of good cause, a licensee or applicant suffering from a physical condition should provide evidence to the board, including medical records, of a clinical diagnosis by a physician.

(3) Additional factors for consideration. A licensee's or applicant's diagnosis shall be considered along with the licensee's or applicant's:

- (A) current and past levels of functioning;
- (B) concurrent medical disorders;
- (C) complicating factors such as substance-related disorders;
- (D) compliance with treatments;
- (E) response to treatment;
- (F) prognosis; and
- (G) stage of recovery from the illness.

(4) Hearing. An informal show compliance proceeding shall be considered an evidentiary hearing for the purposes of this subsection and in accordance with §164.202 of the Act.

(h) Confidentiality. Consideration of proposed agreed rehabilitation orders shall be conducted so as to keep the identity of the licensee or applicant confidential.

(1) Confidentiality may be preserved through one or more of the following:

(A) confidential informal show compliance proceedings;

(B) confidential modification and termination requests and proceedings;

(C) executive sessions by the board and board committee; and/or,

(D) redaction of identifying information when such orders are considered in open session.

(2) The rehabilitation order may require the licensee or applicant to participate in activities or programs provided by a local or statewide private medical association. If the board makes such a requirement, the board shall:

(A) inform the association of the licensee's duties under the order, including specific guidance to enable the association to comply with any requirements necessary to assist in the physician's rehabilitation;

(B) provide to the association any information, including confidential information, that the board determines to be necessary, including a copy of the rehabilitation order; and

(C) advise the association that the information provided by the board is and remains confidential, is not subject to discovery, subpoena, or other means of legal compulsion, and may be disclosed only to the board, in accordance with §164.205(b), Texas Occupations Code.

(3) The board, board staff, and agents of the board will attempt in good faith to ensure that the terms and conditions of a rehabilitation order remain confidential. However, in order to ensure compliance with a rehabilitation order, it may be necessary to disrupt the activities of a licensee or applicant and to contact the licensee or applicant, including but not limited to telephone calls, mail, or unannounced visits to the licensee's or applicant's place of employment or residence.

(4) Upon a determination by the board that licensee or applicant has violated a rehabilitation order, the rehabilitation order may become a public document and subject to the Texas Public Information Act.

This agency hereby certifies that the emergency adoption has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 1, 2009.

TRD-200903878

Mari Robinson, J.D.

Interim Executive Director

Texas Medical Board

Effective Date: September 1, 2009

Expiration Date: December 29, 2009

For further information, please call: (512) 305-7016

◆ ◆ ◆

PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

Symbols in proposed rule text. Proposed new language is indicated by underlined text. ~~[Square brackets and strikethrough]~~ indicate existing rule text that is proposed for deletion. "(No change)" indicates that existing rule text at this level will not be amended.

TITLE 1. ADMINISTRATION

PART 4. OFFICE OF THE SECRETARY OF STATE

CHAPTER 81. ELECTIONS

SUBCHAPTER B. EARLY VOTING

1 TAC §81.40

The Office of the Secretary of State, Elections Division, proposes new §81.40, concerning acceptance of a Federal Postcard Application (FPCA) form as an application for permanent voter registration, pursuant to the passage of House Bill 536, 81st Legislature, 2009; and the authorization of an electronic transmission of an image for transmission of the FPCA, pursuant to the passage of House Bill 551, 81st Legislature, 2009.

Ann McGeehan, Director of Elections, has determined that for the first five-year period the new rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the new rule.

Ms. McGeehan has also determined that for each year of the first five-year period the proposed new rule is in effect, the public will benefit from having detailed procedures to guide election officials in the use of the FPCA for voters in the military and for non-military overseas voters. There will be no effect on small businesses or micro-businesses.

Comments on the proposal may be submitted to the Office of the Secretary of State, Ann McGeehan, Director of Elections, P.O. Box 12060, Austin, Texas 78711-2060. Comments may also be sent via e-mail to: elections@sos.state.tx.us. For comments submitted electronically, please include "Proposed Adoption of Rule 81.40" in the subject line. Comments must be received no later than Friday, October 16, 2009. Comments should be organized in a manner consistent with the organization of the proposed rule. Questions concerning the proposed new rule may be directed to Elections Division, Office of the Texas Secretary of State, at (512) 463-5650.

The new rule is proposed under the Texas Election Code, §13.002, which provides the Office of the Secretary of State with the authority to prescribe rules to implement the new rule to §13.002, §101.006, Texas Election Code; and §101.004, Texas Election Code, which provides the Office of the Secretary of State with the authority to prescribe rules to implement the new rule to §101.004, Texas Election Code.

Statutory Authority: Election Code §13.002, §101.004.

Cross Reference to Statute: Election Code, Chapters 13 and 101 are affected by this rule.

§81.40. Federal Postcard Application as Application for Permanent Registration and FPCA Eligibility for Electronic Transmission of Image.

(a) Eligibility. Pursuant to §101.001 of the Texas Election Code, a person is eligible to submit a Federal Postcard Application (an "FPCA") if:

(1) the person is qualified to vote in this state or, if not registered to vote in this state, would be qualified if registered; and

(2) the person is:

(A) a member of the armed forces of the United States, or the spouse or a dependent of a member;

(B) a member of the merchant marine of the United States, or the spouse or a dependent of a member; or

(C) domiciled in this state but temporarily living outside the territorial limits of the United States and the District of Columbia who is qualified to submit an FPCA.

(b) General Conduct of Voting. The FPCA serves simultaneously:

(1) as a request for a mail ballot from the early voting clerk for a period of two federal elections; and

(2) as a request for permanent registration in the county in which the voter resides, unless the voter states that he or she resides indefinitely outside the United States.

(c) Action on original FPCA by early voting clerk.

(1) The FPCA must be submitted to the early voting clerk for the election who serves the election precinct of the applicant's residence. The FPCA may be submitted by mail, telephonic facsimile (fax), or an electronic transmission of the image to an authorized recipient (for example, scanning and attaching to an email) to the address of the early voting clerk.

(2) The early voting clerk shall make a notation of the name of the office and date and time of receipt, then make a complete copy (front and back, and any accompanying envelopes or fax cover sheets) of the FPCA to retain for mail balloting purposes. The early voting clerk shall then forward the original FPCA (and any accompanying envelopes or fax cover sheets) to the county voter registrar for the county, in which the applicant's Texas residence address is located, as soon as practicable, but no later than within five days, so that the FPCA may be processed as an application for permanent voter registration, even if the FPCA is insufficient as a mail ballot request. This deadline does not supersede the deadlines to mail out ballots pursuant to §86.004, Election Code. The early voting clerk's copy functions as the official FPCA for all mail balloting purposes for elections, including purposes necessary during the early voting ballot board meeting, and the copy shall be maintained as an election record for 22 months after the last election in which the FPCA is processed for mail balloting purposes, pursuant to

§66.058, Election Code. Once the early voting clerk makes a copy for early voting purposes, that copy is considered the "original" for purposes of public information requests made of the early voting clerk, including the rules concerning originals at §86.014, Election Code.

(3) The authorized recipient will notate the name of the office receiving the FPCA and the date and time of receipt on the face of the FPCA, before taking any action on the original FPCA. Failure to make these notations will not affect the overall validity of the FPCA, even if the calculation of the date of receipt is affected.

(4) Processing defective FPCAs.

(A) Incorrect territory. If the Texas residence address provided on the FPCA indicates an address outside the early voting clerk's territory, the clerk shall make a copy for his or her records, and immediately forward the original FPCA to the correct jurisdiction's early voting clerk not later than the day after it is received, pursuant to §101.004(d), Election Code. The (incorrect) early voting clerk shall send the voter a notice of rejection on behalf of his or her jurisdiction pursuant to §86.001(f), Election Code, and include a statement that the FPCA has been forwarded to the correct early voting clerk. If the early voting clerk cannot determine the correct jurisdiction based on the residence address, the early voting clerk shall seek assistance from the office of the county voter registrar or the secretary of state. Regardless of whether the early voting clerk's territory is incorrect, the early voting clerk shall forward a courtesy copy of the FPCA to the voter registrar for that clerk's territory (so that the voter registrar may provide a second review of the voter's address).

(B) Mail balloting errors other than voter registration. For any other voter errors resulting in an insufficient mail ballot request, the early voting clerk shall send the voter a notice of rejection pursuant to §86.001, Election Code, even though the FPCA is still forwarded to the voter registrar for purposes of an application for permanent voter registration.

(d) Action on FPCA by county voter registrar.

(1) Upon receipt of the original FPCA from the early voting clerk, the county voter registrar shall immediately review the FPCA to see if the voter's permanent residence address places the voter in their Texas county. The voter registrar shall process the FPCA in the same manner as a regular voter registration application. For any errors that make the FPCA insufficient for voter registration, the voter registrar shall send the voter a notice of rejection or notice of incomplete, whichever is appropriate in accordance to §13.073, Election Code. The original shall be kept by the county voter registrar for the retention period applicable to applications for permanent voter registration.

(2) If the applicant states on the FPCA that he or she resides outside the United States indefinitely, the voter registrar shall not treat any such FPCA (which was incorrectly forwarded to the registrar) as an application for permanent voter registration and shall notify the early voting clerk that the FPCA was forwarded to the voter registration office in error.

(3) If the FPCA was sent to the wrong Texas county, the registrar shall make a notation of the date received by his or her office, notify immediately the early voting clerk in their county of the error so that a ballot is not sent for their county, then immediately forward the original FPCA to the correct early voting clerk so that the clerk can process the FPCA in accordance with subsection (c) of this section (unless the early voting clerk has already determined that his or her county is incorrect in accordance with subsection (c)(4)(A) of this section).

(4) Request for Return of Original FPCA. A voter registrar who records voter registration data for storage purposes on optical disk or other computer storage medium, shall, upon request of the early

voting clerk, deliver the original FPCA to the early voting clerk before destroying the original FPCA.

(5) If the voter registrar receives a courtesy copy of an FPCA from an early voting clerk (based on initial determination of incorrect territory by the clerk), and the voter registrar has information that confirms that their county is the correct county, the voter registrar shall contact the original early voting clerk immediately to begin the processing of the FPCA in subsection (c) of this section. The early voting clerk shall notify the early voting clerk to whom the FPCA was forwarded of the mistake.

(e) Timeliness of FPCA for mail ballot request purposes.

(1) The FPCA is considered received for mail ballot request purposes on the date of actual receipt by the early voting clerk, pursuant to §§101.002, 101.004, 84.007(d), Election Code.

(2) If the FPCA is first received by the county voter registrar's office, the FPCA is considered received as a request for mail ballot for purposes of an election when the county voter registrar receives the FPCA on behalf of the county.

(3) Pursuant to §101.004(d), Election Code, a timely FPCA addressed to the wrong early voting clerk shall be forwarded to the correct early voting clerk not later than the day after it is received by the wrong early voting clerk.

(4) Pursuant to §101.004, Election Code, if an otherwise compliant FPCA is postmarked, or received without postmark within the prescribed dates, the applicant, who:

(A) is not otherwise permanently registered; and

(B) has not stated that he or she is residing outside the United States indefinitely, will receive a full ballot based on the temporary registration status obtained by using the FPCA; otherwise, the applicant will only receive a "federal ballot" (federal offices only) pursuant to §101.004(f), Election Code. If the applicant states that he or she is residing outside the United States indefinitely, the early voting clerk does not forward the FPCA to the voter registrar since the FPCA will not constitute a permanent voter registration application, and the FPCA will be treated as a temporary registration and request for mail ballot for a period of two federal elections in accordance with §101.005 and §101.006(a), Election Code.

(5) The statutes governing the method of transmission of a mail ballot request shall govern the method of transmission of an FPCA generally as provided by §101.002, Election Code and additionally as provided by §101.004, Election Code as amended.

(A) A scanned FPCA may be submitted to an early voting clerk whose office has e-mail available via an electronic transmission of an image, pursuant to §101.004, Election Code. The date of submission of the scanned FPCA is determined by the date and time the electronic transmission of an image (e.g., e-mail) was sent by the applicant.

(B) If the FPCA is submitted by telephonic facsimile (fax) pursuant to §84.007, Election Code, the date of submission is determined by the date and time of receipt as reflected by the time of receipt on the faxed document (unless the authorized recipient can verify that the fax machine is in error and the receipt is personally witnessed as being timely).

(f) Timeliness of FPCA for voter registration purposes.

(1) The FPCA is considered submitted for purposes of an application for permanent voter registration for any FPCA received by an authorized recipient on or after September 1, 2009, pursuant to §13.002, Election Code as amended by House Bill 536 (2009).

(2) The FPCA is considered submitted for purposes of an application for permanent voter registration based on the "date of submission" to the first authorized recipient (e.g., an early voting clerk or county voter registrar), regardless of whether the FPCA was received in the correct county, pursuant to §13.072, Election Code.

(3) The date of submission of the FPCA for purposes of an application for permanent voter registration is defined as:

(A) the date of the postmark, if any, in accordance with §13.143(d), Election Code; or

(B) indicia of the time and date the voter deposited the FPCA with the common or contract carrier, or

(C) if the FPCA submitted by mail or common or contract carrier has no postmark or other indicia of the time and date the voter deposited the FPCA with the common or contract carrier, the date of submission is then determined by the date of actual receipt by the first authorized recipient; or

(D) if the FPCA is submitted by electronic transmission of an image (e.g., e-mail), the date of submission of the scanned signed FPCA is determined by the date and time the electronic transmission of an image (e.g., e-mail) was sent by the applicant; or

(E) if the FPCA is submitted by telefacsimile (fax), the date of receipt as reflected by the time of receipt on the faxed document (unless the authorized recipient can verify that the fax machine is in error and the receipt is personally witnessed as being timely).

(4) This rule does not authorize the e-mailing, faxing, or other electronic transmission of an image of a regular (non-FPCA) voter registration application.

(g) Jury Lists. Voters whose temporary registrations are based on an FPCA will not form the basis for the jury lists. Voters whose permanent registrations are based on an FPCA will not form the basis for the jury lists. When an FPCA voter later renews or otherwise creates a registration status based on a regular voter registration application, that registration status will be the basis for the jury lists.

(h) Petition Signatures. The FPCA voters with temporary or permanent registration status are not included in the number of registered voters of a territory when calculating the number of signatures needed for a petition. This does not bar an FPCA voter with permanent registration status (who is otherwise eligible to sign a petition) from signing a petition.

(i) Definitions.

(1) ABBM--Application for Ballot by Mail.

(2) Authorized recipient--An early voting clerk or county voter registrar. A volunteer deputy registrar is not an authorized recipient of a Federal Postcard Application.

(3) Early voting clerk--The early voting clerk for a county election or a non-county election in which the county early voting clerk is the early voting clerk by joint election agreement or election services contract; or, the early voting clerk for a local political subdivision election (Example: city, school district, water district).

(4) E-mail--For purposes of these rules refers to a signed hardcopy FPCA which is scanned and attached to an e-mail.

(5) FPCA--Federal Postcard Application.

(6) Permanent voter registration--The registration status equivalent to a voter who applies with a regular application for voter registration.

(7) Temporary voter registration--The type or types of registration status based on the FPCA alone under the Texas Election Code and Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), before the permanent voter registration is effective.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 4, 2009.

TRD-200903947

John Sepehri

General Counsel

Office of the Secretary of State

Earliest possible date of adoption: October 18, 2009

For further information, please call: (512) 463-5650



PART 8. TEXAS JUDICIAL COUNCIL

CHAPTER 171. REPORTING REQUIREMENTS

1 TAC §§171.2, 171.7, 171.8

The Texas Judicial Council (the Council) proposes amendments to §171.2 and new §171.7 and §171.8 regarding requirements for reporting the activity of the courts of Texas. The Council seeks to capture better information about current justice court and municipal court activity and improve data collection, as the activity of the courts has changed over the decades that the existing forms have been used. The new rules require electronic submission unless a waiver is granted, and specify details of the information to be captured in the proposed new forms. The proposed forms and instructions may be found on the Council's website under the activities of the Committee on Judicial Data Management at <http://www.courts.state.tx.us/tjc/cte-active.asp>.

Although the rules regarding requirements for reporting the activity of the justice and municipal courts are scheduled to be adopted by the Council in 2009, the courts will not be required to report the data required by the new rules until September 1, 2011, which will allow time to implement any required changes to their systems.

Glenna Bowman, chief financial officer of the Office of Court Administration (OCA), has determined that, for each year of the first five-year period the new sections are in effect, there will be fiscal implications for the state as a result of enforcing or administering the rule as proposed. In year 1, the fiscal year beginning September 1, 2009, OCA will implement a technology project for the re-write of the Judicial Data Management System. This project will include data system updates for all levels of courts at an estimated cost of \$379,850. A portion of the total project cost will support the data changes for justice and municipal courts proposed in this rule. In years 2 through 5, OCA will utilize existing technical staff to maintain the system and make other changes that may be required as the system matures. Fiscal implications for local governments as a result of compliance with the sections will depend on 1) the existence and terms of any contract with a case management system vendor concerning implementation of changes in reporting case activity information to OCA; and 2) the level of sophistication of the government's current case management system and the degree to which changes will need to be made.

Mary Cowherd, deputy director and director of research and court services with OCA, has determined that for each year of the first five years the new sections are in effect, the public benefit anticipated as a result of the new sections will be 1) clarity in what is required by law for reporting case activity; and 2) a repository of information that more accurately reflects the workloads of the state's trial courts and that is more useful to state and local officials and other interested parties for judicial administration, policy making, and fiscal planning. There will be no cost to small business or individuals.

Comments on the proposal may be submitted to Mary Cowherd, deputy director and director of research and court services with OCA, at P.O. Box 12066, Austin, Texas 78711-2066 or electronically to rulecomments@courts.state.tx.us.

The amendment and new sections are proposed under §71.019 of the Texas Government Code, which authorizes the Council to adopt rules expedient for the administration of its functions; and §71.035 of the Texas Government Code, which authorizes the Council to require a state justice, judge, clerk, or other court official, as an official duty, to comply with reasonable requirements for supplying statistics pertaining to the amount and character of the civil and criminal business transacted by the court or other information on the conduct, operation, or business of the court or the office of the clerk of the court.

No other statutes, articles, or codes are affected by these sections.

§171.2. General Reporting Requirements.

District clerks, county clerks, justices of the peace, and municipal judges shall submit a summary-level court activity report each month to the Office of Court Administration (OCA) using the methods required by this chapter no later than 20 days following the end of the month reported. The revised reporting requirements of this chapter concerning district courts, statutory county courts, and constitutional county courts will take effect with reports beginning September 1, 2010. The revised reporting requirements of this chapter concerning justice courts and municipal courts will take effect with reports beginning September 1, 2011. OCA shall maintain and update reporting instructions and forms initially approved by the Texas Judicial Council, and shall continually make the instructions and forms available by publishing them on its website and by other appropriate means.

§171.7. Justice Court Reports.

(a) Method. Each justice of the peace shall submit a justice court activity report of the criminal and civil cases in the judge's court. Unless OCA grants a waiver for good cause, the justice of the peace shall submit the reports by electronic means approved by OCA. The maximum duration of a waiver is one year, but OCA may approve successive waivers.

(b) Reporting Categories.

(1) Criminal case type categories. The monthly report contains the following categories of criminal case types: traffic misdemeanors - subdivided into non-parking, parking, and county ordinance offenses; and non-traffic misdemeanors - subdivided into Penal Code violations, other state law violations, and county ordinance violations.

(2) Civil case type categories. The monthly report contains the following categories of civil case types: small claims suits, forcible entry and detainer (evictions), and other civil suits.

(3) Juvenile/minor activity. The monthly report contains a section for reporting court activity related to juveniles and minors.

(4) Additional activity. The monthly report contains a section for reporting additional court activity such as magistrate activities and information on fines, court costs and fees collected or otherwise satisfied.

§171.8. Municipal Court Reports.

(a) Method. Each municipal court shall submit a municipal court activity report of the criminal and civil or administrative cases in the court. Unless OCA grants a waiver for good cause, the court shall submit the reports by electronic means approved by OCA. The maximum duration of a waiver is one year, but OCA may approve successive waivers.

(b) Reporting Categories.

(1) Criminal case type categories. The monthly report contains the following categories of criminal case types: traffic misdemeanors - subdivided into non-parking, parking, and city ordinance offenses; and non-traffic misdemeanors - subdivided into Penal Code violations, other state law violations, and city ordinance violations.

(2) Civil/administrative case type category. The monthly report contains a civil/administrative case type category for civil or administrative cases.

(3) Juvenile/minor activity. The monthly report contains a section for reporting court activity related to juveniles and minors.

(4) Additional activity. The monthly report contains a section for reporting additional court activity such as magistrate activities and information on fines, court costs and fees collected or otherwise satisfied.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 4, 2009.

TRD-200903936

Mena Ramon

General Counsel

Texas Judicial Council

Earliest possible date of adoption: October 18, 2009

For further information, please call: (512) 463-6321



TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 19. QUARANTINES AND NOXIOUS AND INVASIVE PLANTS

SUBCHAPTER A. GENERAL QUARANTINE PROVISIONS

4 TAC §19.3

The Texas Department of Agriculture (the department) proposes amendments to §19.3, concerning an increase of fees for the issuance of federal phytosanitary certificates. The department collaborates with the U.S. Department of Agriculture (USDA) to issue federal phytosanitary certificates under the provision of the United States Plant Protection Act, §431. The department is

proposing to continue to collect the same amount of certification and administrative fees as established by U.S. Department of Agriculture to issue the federal phytosanitary certificates. Currently both the department and the USDA charge \$50 to issue a federal phytosanitary certificate. However, to recover its export certification cost USDA raised its cost for a phytosanitary certificate from \$50 to \$77 to be effective during the period of October 1, 2009, to September 30, 2010. The amendments to §19.3 are proposed to increase the federal phytosanitary certification fee to correspond with the fee increase adopted by USDA, as published in the *Federal Register* on July 8, 2009 (Volume 74, pages 32391 - 32399). The increase will bring the department into compliance with cost recovery provisions in state law by allowing the department to collect the new administrative fee adopted by USDA, as well as by recovering current losses in costs of issuance of phytosanitary certificates and the additional administrative costs due to use of the USDA-developed Phytosanitary Certificate Issuance and Tracking System (PCIT) system for processing of phytosanitary certificates. Information on the phytosanitary certification fees can be obtained by contacting the department at 1-800 TELL-TDA (1-800-835-5832) or a local USDA office. At present, phytosanitary certificates are issued either manually using the printed phytosanitary application and certificate or electronically by using the PCIT. The exporter has a choice of selecting a PCIT or manually-issued certificate. USDA has adopted a two-tiered approach in the fee increase due to the manual and electronic issuance of phytosanitary certificates. In addition to a \$77 fee charged for each phytosanitary certificate, USDA is assessing an additional \$3 if PCIT is used, and an additional \$6 if PCIT is not used by the state, as an administrative fee per certificate effective October 1, 2009 until September 30, 2010. USDA will further increase the phytosanitary certification fee after September 30, 2010. In adopting the fees set by USDA, the department is proposing to increase the fee for the issuance of a federal phytosanitary certificate from the present \$50 per certificate to \$77 per certificate, and to charge the additional administrative fees as adopted by USDA. To reflect the USDA changes, the department proposes to charge \$80 for each federal phytosanitary certificate issued using PCIT and \$83 for each certificate issued not using PCIT from October 1, 2009 until September 30, 2010.

Dr. Awinash Bhatkar, coordinator for plant quality programs, has determined that for the first five years the amended section is in effect, there will be fiscal implications for state government due to the increase in the export certification and administrative fees. Over the last three years, the department has issued an average of 3,724 federal phytosanitary certificates annually, approximately 1/10th of those issued by USDA in the state, depending on the global demand for Texas agricultural commodities. There will be an average increase in revenue of \$100,574 per year as a result of the amended fee increase, not including the administrative fee, which will be reimbursed to USDA as administrative charges for the issuance of each federal phytosanitary certificate. The department currently has a deficit of approximately this amount to relating to its issuance of federal phytosanitary certificates at \$50 per certificate, which will be greatly reduced or eliminated by charging the fee in the same amount as that adopted by USDA. There will be no fiscal implications for local government as a result of enforcing or administering the amended section.

Dr. Bhatkar has also determined that for each year of the first five years the amended section is in effect, the public benefit anticipated as a result of enforcing the amended section will be state compliance with federal requirements and an increase in

the recovery of costs to the state for issuance of federal phytosanitary certificates. There will be fiscal implications to an estimated range of 500 - 1,000 small businesses and/or microbusinesses as a result of the proposed amendments. Such businesses will pay an additional \$30 for a federal phytosanitary certificate issued using USDA's Phytosanitary Certificate Issuance and Tracking System (PCIT) and an additional \$33 for a certificate issued without using the PCIT. The department believes that the fee increase is necessary to cover the new administrative fees imposed by USDA, current costs of issuing certificates, and additional costs to the department for use of the USDA-developed PCIT system. The department's cost for issuing 3,971 federal phytosanitary certificates for the period of September 1, 2008, to August 25, 2009, was \$280,871.77. At the current fee of \$50 per federal certificate, the department collects \$186,650, leaving a deficit of \$100,791. Increasing the fee to \$77 will increase the total revenue earned by the department to \$287,441, which is comparable to the amount needed to support and continue providing the service. The department believes that not increasing the fee, as proposed, will result in a greater gap between the costs to the state of providing this service for every year the fee is not increased, which could lead to an inability of the department to continue the service. The alternative, of not issuing the federal phytosanitary certificates, is not feasible since Texas exporters are required to have such a certificate before their commodities may be exported.

Comments on the proposal may be submitted to Dr. Awinash Bhatkar, Coordinator for Plant Quality Programs, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The amendments are proposed under the Texas Agriculture Code (Code) §12.021 which authorizes the department to collect fees for phytosanitary inspection and export certification activities; the Code, §12.0144 and Senate Bill 1, Appropriations Act, 81st Legislative Session, 2009, Art. IV-4, Rider 3, which provide that the department shall set fees in an amount which offsets, when feasible, the direct and indirect state costs of administering its regulatory activities; and the Code, §71.056, which allows the department to charge fees for inspection of plant products as required by other countries or states for export certification.

The code that will be affected by the proposal is the Texas Agriculture Code, Chapters 12 and 71.

§19.3. Inspection and Testing Fees.

(a) The department shall collect an inspection fee of \$30 for the issuance of a state phytosanitary or a growing season inspection certificate. The department shall collect the same amount of certification and administrative fees as established by U.S. Department of Agriculture to issue the federal phytosanitary certificates. Information on the phytosanitary certification fees can be obtained by contacting the department at 1-800 TELL-TDA (1-800-835-5832) or a local United States Department of Agriculture Animal and Plant Health Inspection Service office. [and \$50 for a federal phytosanitary certificate.] Fields designated for genetic identity by the department are exempt from the fee. In addition, the department shall collect \$30 per sample for nematode laboratory analysis.

(b) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 2, 2009.

TRD-200903925

Dolores Alvarado Hibbs

General Counsel

Texas Department of Agriculture

Earliest possible date of adoption: October 18, 2009

For further information, please call: (512) 463-4075



TITLE 16. ECONOMIC REGULATION

PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 73. ELECTRICIANS

The Texas Department of Licensing and Regulation (Department) proposes amendments to §§73.10, 73.20 - 73.24, 73.26, 73.28, 73.40, 73.65, 73.70, 73.80, and 73.90; the repeal of §§73.51 - 73.54, and 73.60; and new §§73.51 - 73.54, 73.60, and 73.91 regarding the electricians program.

The proposed amendments implement changes delineated in House Bill (HB) 1973, 81st Legislature, Regular Session, 2009, and changes recommended by staff to update and clarify existing rules to improve the regulation of the industry. These rule changes are proposed under the authority of the Texas Occupations Code §1305.102(a) that mandates that the executive director adopt rules for the licensing of electricians, sign electricians, electrical sign contractors, electrical contractors, residential appliance installers, and residential appliance installation contractors.

Proposed amendments to §73.10 establish definitions, in addition to those found in Chapter 1305, for terms that are used in the statute and rules. HB 1973 requires the Department to expand its regulatory authority over residential appliance installers and contractors to specifically include pool equipment installation and maintenance. Changes to facilitate HB 1973 include proposed amendments to paragraphs §73.10(23) and (25) for pool installation and maintenance to be included in the definition of residential appliance installation and redefine residential appliance to include pool related equipment as mandated in HB 1973. Further amendments clarify "on-the-job training" and define "electro mechanical integrity".

Proposed amendments to §73.20 and §73.21 change the application process by requiring applicants to submit proof documenting the required amount of on-the-job training with initial application instead of providing proof of a passing exam grade with initial application. Previously applicants submitted proof of a passing exam grade before their on-the-job qualifications were examined. This portion of the rule is repealed. The rule amendments provide that an applicant must be qualified for eligibility to take the exam by providing verified proof of their field experience in the appropriate number of hours for the license they wish to obtain. This section specifically limits the maximum number of on-the-job training hours to 2,000 per year to ensure that the standards for licensure are uniform and meet the substantive requirements for licensure. Lastly, the provision against obtaining a license by fraud or false representation has been consolidated under §73.22.

Proposed rule §73.26 is amended to clarify documentation of the job training. It provides that applicants may meet on the job experience requirements for licensure by providing verified proof in an approved form by an appropriate supervising licensee. It also amends the opportunity for an applicant to provide proof of experience under an unlicensed supervisor and under what conditions that is acceptable. Lastly, the proposed amendments to §73.26 add that a master or master sign electrician must provide documentation of on-the-job experience on the request of the Department to streamline the process of prequalification for examination and to help eliminate difficulty of applicants attempting to gather documentation for prequalification for examination.

Sections 73.51, 73.52, and 73.54 are repealed and replaced to amend in greater detail the responsibilities of electrical, electrical sign, and residential appliance installation contractors. Each section is the same for each license class except for the provision under electrical and electrical sign contractors that the design of an electrical system or electrical sign system will only be done by the appropriate master electrician, master sign electrician or a design professional as authorized by statute. There is no design provision in §73.54 for it would not apply to residential appliance installation.

The common responsibility for each license class respectively include notifying the Department within 30 business days of a change in the master of record. This deadline for notification changes the previous rule by putting a timeline for reporting. However, the duty to inform the Department is unchanged. This provision was added to clarify the reporting issue for the industry and support the goal of public protection by making a consistent and timely reporting schedule for the responsible master of record. Under the same justification, the provision for record keeping was changed to make records available to the Department in Austin, Texas or at another location designated by the Department should the contractor have its principal place of business in another state.

Proposed new rules §§73.51, 73.52, and 73.54 include provisions that require a contractor to provide a safe, code-compliant electrical installation and service, not misrepresent service or the need for service, not engage in misrepresentation to induce an entity to contract for services, and ensure that the contractor's work be performed by licensed individuals. These proposed new rules are added for the benefit of public safety.

Further amendments are proposed for rules §§73.51, 73.52, and 73.54 to serve the Department's charge to protect public safety, address the requirement that a contractor may subcontract work to licensed electricians provided that the contractor is responsible for compliance with applicable codes for all work performed by the subcontractor and all non-exempt work is performed by licensed individuals. These same proposed rule sections mandate that a contractor include in all advertising their name and license number with the exception of television advertisements, telephone book listings, telephone solicitations, nominal promotional gifts, and signs at the permanent business location.

Section 73.53 is being repealed and replaced to change the section heading to avoid repetitious use of similar terms in other section headings. The wording of the rule is changed to clarify that an unlicensed person who performs electrical work in violation of the statute is subject to this provision.

Section 73.60 is also being repealed and replaced to allow for similar editorial changes as described above. Additionally, proposed changes to subsection (d)(4) delete the provision that a

licensee may not perform duties or work in a negligent or incompetent manner as that duty is similarly addressed in the subsection (a) and is similarly prescribed under the general charge of "competency" and is mirrored in the "workmanlike" standard required for all work in the adopted National Electric Code.

The proposed amendments to §73.65 note that travel expenses incurred on behalf of board business can be reimbursed for advisory board members when the legislature has specifically authorized reimbursement for travel and according to reimbursement policies for eligible advisory boards.

The proposed amendments to §73.80 lower the application fee for a residential appliance installation contractor from \$125 to \$115 and reduce the application fee for a residential appliance installer from \$40 to \$35. The Department is required to set fees in amounts reasonable and necessary to cover the costs of administering the programs under its jurisdiction. The proposed revised fees for these contractors is sufficient to cover the costs and does not adversely affect the administration and enforcement of the program.

The proposed amendments to §73.90 make minor technical corrections.

Proposed new §73.91 regarding enforcement authority is added to inform the regulated industry of the Department's expanded enforcement authority under Texas Occupations Code, Chapter 51 that may not be included in the specific program statute.

The substance of these rule changes was recommended by the Electrical Safety and Licensing Advisory Board (Board) at its meeting on September 1, 2009. Other non-substantive grammatical and editorial changes are proposed.

William H. Kuntz, Jr., Executive Director, has determined that for the first five-year period the proposed amendments, repeals, and new rules are in effect there will be no direct cost to state or local government as a result of enforcing or administering the proposed rules.

Mr. Kuntz also has determined that for each year of the first five-year period the proposed amendments, repeals, and new rules are in effect, the public benefit will be added protection for the public health and safety. Additionally, the application process will be more efficient by assuring that 1) only qualified applicants take the examination for licensure and that 2) applicants having difficulty obtaining verification from previous jobs have a resource in the Department to assist them in getting their documentation to qualify them for examination. The result will be realized efficiency for the program and the industry at large.

There is no anticipated adverse economic effect on small or micro-business or to persons who are required to comply with the rules as proposed.

There is no anticipated potential economic impact of this rule proposal on small or micro businesses. While the requirement to place the contractor's license number in advertising may involve some minimal cost, the Department believes that this cost would not be significant and would not adversely impact licensees. Since the agency has determined that the rules will have no adverse economic effect on small or micro businesses preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, as detailed under Texas Government Code §2006.002, is not required.

Comments on the proposal may be submitted by mail to Caroline Jackson, Legal Assistant, General Counsel's Office, Texas De-

partment of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, or by facsimile to (512) 475-3032, or electronically to erule.comments@license.state.tx.us. The deadline for comments is 30 days after publication in the *Texas Register*.

16 TAC §§73.10, 73.20 - 73.24, 73.26, 73.28, 73.40, 73.51 - 73.54, 73.60, 73.65, 73.70, 73.80, 73.90, 73.91

The amendments and new rules are proposed under Texas Occupations Code, §51.201(b) and §51.203, which authorize the Texas Commission of Licensing and Regulation (Commission), the Department's governing body, to adopt rules as necessary to implement Chapter 51 and any other law establishing a program regulated by the Department. Also, the amendments and new rules are proposed under Texas Occupations Code, Chapter 1305 which authorizes the Executive Director of the Department and the Commission to adopt rules as necessary to implement this chapter.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapters 51 and 1305.

No other statutes, articles, or codes are affected by the proposal.

§73.10. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise.

(1) Assumed name--A name used by a business as defined in the Business and Commerce Code, Title 4, Chapter 36, Subchapter A, §36.02.

(2) Business affiliation--The business organization to which a master licensee may assign his or her license.

(3) Employee--An individual who performs tasks assigned to him by his employer. The employee is subject to the deduction of social security and federal income taxes from his pay. An employee may be full time, part time, or seasonal.

(4) Employer--One who employs the services of employees, pays their wages, deducts the required social security and federal income taxes from the employee's pay, and directs and controls the employee's performance.

(5) Filed--A document is deemed to have been filed with the department on the date that the document has been received by the department or, if the document has been mailed to the department, the date a postmark is applied to the document by the U.S. Postal Service.

(6) General Supervision--Exercise of oversight by a master electrician on behalf of an electrical contractor, or electrical sign contractor, or by a master sign electrician on behalf of an electrical sign contractor of performance by all classes of electrical licensees of electrical work bearing responsibility for the work's compliance with applicable codes under Texas Occupations Code, Chapter 1305.

(7) On-Site Supervision--Exercise of supervision of electrical work or electrical sign work by a licensed individual other than an electrical apprentice. Continuous supervision of an electrical apprentice is not required, though the on-site supervising licensee is responsible for review and inspection of the electrical apprentice's work to ensure compliance with any applicable codes or standards.

(8) Electrical Contractor--A person, or entity, licensed as an electrical contractor, that is in the business of performing "Electrical Contracting" as defined by Texas Occupations Code, §1305.002(5).

(9) Master Electrician--An individual, licensed as a master electrician, who on behalf of an electrical contractor, electrical sign

contractor, or employing governmental entity, performs "Electrical Work" as defined by Texas Occupations Code, §1305.002(11).

(10) Journeyman Electrician--An individual, licensed as a journeyman electrician, who works under the general supervision of a master electrician, on behalf of an electrical contractor, or employing governmental entity, while performing "Electrical Work" as defined by Texas Occupations Code, §1305.002(11).

(11) Electrical Apprentice--An individual, licensed as an apprentice who works under the on-site supervision of a master electrician, [a] journeyman electrician, or [a] residential wireman, on behalf of an electrical contractor or employing governmental entity performing "Electrical Work" as defined by Texas Occupations Code, §1305.002(11).

(12) Electrical Sign Contractor--A person, or entity, licensed as an electrical sign contractor, that is in the business of performing "Electrical Sign Contracting" as defined by Texas Occupations Code, §1305.002(9).

(13) Master Sign Electrician--An individual, licensed as a master sign electrician, who, on behalf of an electrical sign contractor, performs "Electrical Sign Work" as defined in paragraph (18) [of this section].

(14) Journeyman Sign Electrician--An individual, licensed as a journeyman sign electrician, who works under the general supervision of a master electrician or a master sign electrician, on behalf of an electrical sign contractor, while performing "Electrical Sign Work" as defined in paragraph (18) [of this section].

(15) Residential Wireman--An individual, licensed as a residential wireman, who works under the general supervision of a master electrician, on behalf of an electrical contractor, or employing governmental entity, while performing electrical work that is limited to electrical installations in single family and multifamily dwellings not exceeding four stories, as defined by Texas Occupations Code, §1305.002(13).

(16) Maintenance Electrician--An individual, licensed as a maintenance electrician, who works under the general supervision of a master electrician, on behalf of an electrical contractor, or employing governmental entity while performing [and performs] "Electrical Maintenance Work" as defined in paragraph (17) [of this section].

(17) Electrical Maintenance Work--The replacement, or repair of existing electrical appurtenances, apparatus, equipment, machinery, or controls used in connection with the use of electrical energy in, on, outside, or attached to a building, residence, structure, property, or premises. All replacements or repairs must be of the same rating and type as the existing installation. No improvements may be made that are necessary to comply with applicable codes under Texas Occupations Code, Chapter 1305. Electrical maintenance work does not include the installation of any new electrical appurtenances, apparatus, equipment, machinery, or controls beyond the scope of any existing electrical installation.

(18) Electrical Sign Work--Any labor or material used in manufacturing, installing, maintaining, extending, connecting or re-connecting an electrical wiring system and its appurtenances, apparatus or equipment used in connection with signs, outline lighting, awnings, signals, light emitting diodes, and the repair of existing outdoor electric discharge lighting, including parking lot pole lighting. This also includes the installation of an electrical service integral to an isolated sign and/or outline lighting installation.

(19) Work Involved in the Manufacture of Electrical Equipment--Work involved in the manufacture of electrical equipment

includes on and off-site manufacture, commissioning, testing, calibration, coordination, troubleshooting, evaluation, repair or retrofits with components of the same ampacity, maintenance and servicing of electrical equipment within their enclosures performed by authorized employees, or authorized representatives of electrical equipment manufacturers and limited to the type of products they manufacture.

(20) Electrical Sign Apprentice--An individual, licensed as an electrical sign apprentice who works under the on-site supervision of a master electrician, a master sign electrician, or a journeyman sign electrician, on behalf of an electrical sign contractor performing "Electrical Sign Work" as defined by this chapter [these rules].

(21) A Principal Place of Business--For purposes of this chapter [these rules], a contractor has a principal place of business in another state or territory or foreign country if the contractor is doing business in Texas without complying with all applicable Texas statutes and the contractor conducts substantial business in another state, territory or country while business conducted by the contractor in Texas is minimal.

(22) On-the-job Training--Training or experience gained under the supervision of an appropriate licensee, as prescribed by Texas Occupations Code Chapter 1305, while performing electrical work as defined by Texas Occupations Code, §1305.002(11).

(23) Residential Appliance Installer--An individual, licensed as a residential appliance installer, who on behalf of a residential appliance installation contractor, performs electrical work that is limited to residential appliance installation including residential pool-related electrical installation and maintenance as defined by Texas Occupations Code, §1305.002(12-b) [§1305.002(12-e)].

(24) Residential Appliance Installation Contractor--A person or entity licensed as a residential appliance installation contractor, that is in the business of residential appliance installation including pool-related electrical installation and maintenance as defined by Texas Occupations Code §1305.002(12-d).

(25) Residential Appliance--Electrical equipment that performs a specific function, and is installed as a unit in a dwelling by direct connection to an existing electrical circuit, such as water heaters, kitchen appliances, or pool related electrical device. The term does not include general use equipment such as service equipment, other electrical power production sources, or branch circuit overcurrent protection devices not installed in the listed appliance or listed pool-related electrical device.

~~{(25) A unit of electrical equipment that is designed and installed in a dwelling by direct connection to an existing electrical circuit to perform a specific function such as water heating, for example. The term does not include general use equipment, such as an electric motor, for example, that is not designed for a specific function.}~~

(26) Offer to perform--To make a written or oral proposal, to contract in writing or orally to perform electrical work or electrical sign work, or to advertise in any form through any medium that a person or business entity is an electrical contractor or electrical sign contractor, or that implies in any way that a person or business entity is available to contract for or perform electrical work or electrical sign work.

(27) Electro Mechanical Integrity--The condition of an electrical product, electrical system, or electrical equipment installed in accordance with its intended purpose and according to standards at least as strict as the standards provided by the National Electrical Code, the manufacturer's specifications, any listing or labeling on the product, and all other applicable codes or ordinances.

§73.20. Licensing Requirements--Applicant and Experience Requirements.

(a) An applicant for a license must submit the required fees with a completed application and the appropriate attachments:

(1) Applicants for Master Electrician, Master Sign Electrician, Journeyman Electrician, Journeyman Sign Electrician, Residential Wireman, Maintenance Electrician, and Residential Appliance Installer licenses must submit documentation proving the required amount of on-the-job-training ~~[proof of a passing grade on the accepted examination]~~.

(2) Applicants for contractor's licenses must submit proof of general liability insurance and either workers' compensation insurance or a certificate of authority to self insure, or a statement that the applicant has elected not to obtain workers' compensation insurance pursuant to Subchapter A, Chapter 406, Labor Code, with the initial and renewal applications.

(b) An applicant must complete all requirements within one year of the date the application is filed.

~~[(e) Except as provided by §73.24, each individual applicant must pass all parts of a Department accepted examination, and provide proof of a passing grade, before the applicant will be licensed. To be accepted, an examination must have been taken and passed no more than two years before the date of the application.]~~

~~(c) [(d)]~~ For purposes of this chapter, 2,000 hours of on the job training shall be the maximum that may be earned within one year ~~[equal one year of on the job training]~~. On the job training must be established by letter(s) setting out dates of employment from persons who either employed or supervised the applicant or as required by the application. Letters must include the name and license type of the supervising person.

~~(d) [(e)]~~ Each applicant must meet the applicable eligibility requirements as set forth in Texas ~~[the]~~ Occupations Code, §§1305.153 - 1305.1618.

~~[(f) Obtaining a license by fraud or false representation is grounds for denial, suspension, or revocation of a license and/or an administrative penalty.]~~

§73.21. Licensing Requirements--Examinations.

(a) To obtain a license by examination issued under this chapter:^[5]

(1) An individual applicant must submit a completed application, all necessary documentation, and appropriate fees to the Texas Department of Licensing and Regulation for review and determination of examination eligibility.

(2) An [an] individual applicant must achieve a passing score on [successfully complete] an examination approved by the executive director [Executive Director] of the Texas Department of Licensing and Regulation.

(b) To obtain a license without examination, an applicant must ~~[either;]~~

~~[(1)]~~ have been licensed for the preceding year by a municipality or regional licensing authority that has terminated its licensing program and have applied for a state issued license within ninety days of the date the program stopped issuing or renewing licenses.~~;~~ ~~or]~~

~~[(2) be an applicant for licensure as a residential appliance installer, and]~~

~~[(A) have completed 4,000 hours of electrical work, or appliance installation work under the supervision of a master electrician; and]~~

~~[(B) apply for licensure no later than June 1, 2008.]~~

§73.22. Licensing Requirements--General.

(a) A license issued under this chapter is valid for one year from the date of issuance and must be renewed annually.

(b) A person shall not perform electrical work requiring a license under Title 8, Texas Occupations Code, Chapter 1305 with an expired license.

(c) Falsifying information on an application, obtaining a license by fraud or false representation, ~~[Falsification of information on an application]~~ or cheating on an examination is grounds for denial, suspension, or revocation of a license and/or an administrative penalty.

(d) An electrical contractor, an electrical sign contractor, or a residential appliance installation contractor shall not use a license number that is not assigned to that contractor by the department ~~[Department]~~.

(e) A license is not transferable.

(f) Altering a license in any way is prohibited and is grounds for a sanction and/or penalty.

(g) If a licensee contracts with a general contractor or a home warranty company to provide installation or service that requires a license under the Act, the licensee remains responsible for the integrity of that work.

(h) A person using the license of another person or allowing another person to use his license shall be subject to license denial, suspension, or revocation and/or assessment of an administrative penalty.

§73.23. Licensing Requirements--Renewal.

(a) Non-receipt of a license renewal notice from the department ~~[Department]~~ does not exempt a person, or entity, from any requirements of this chapter.

(b) A complete request for renewal must be filed on the form approved by the department ~~[Department]~~ and includes all required fees by the expiration date to maintain continuous licensure.

(c) Applications not filed by the expiration date are considered applications for late renewal and are subject to late renewal fees.

(d) Licenses issued from a late renewal application will have an unlicensed period from the expiration date of the previous license to the issuance date of the renewed license. Electrical work ~~[Work]~~ that requires a license issued under this chapter shall not be performed during the unlicensed period.

§73.24. Licensing Requirements--Waiver of Examination Requirements.

(a) An applicant who is licensed in another state that has entered into a reciprocity agreement with Texas regarding licensure of electricians, sign electricians, or residential appliance installers may obtain an equivalent license in Texas without passing the examination, provided that all other licensure requirements are met, as defined by Texas Occupations Code, Chapter 1305.

(b) The examination requirement is waived if, based upon acceptable proof, the executive director ~~[Executive Director]~~ determines that the provisions of §73.21(b) are met.

(c) Acceptable proof of an applicant's qualifications must be presented on a form prescribed by the department ~~[Department]~~ that:

(1) certifies completion of the required hours of on-the-job training under the supervision of a master electrician or master sign electrician as appropriate, or

(2) is completed by the municipality or region in which the applicant was licensed for at least one year.

§73.26. Documentation of Required On-The-Job Training.

(a) Individual applicants ~~[for electrical licenses and electrical sign licenses]~~ may meet requirements for [establish required] on-the-job training by providing verified proof, in a form acceptable to the department, [under a master electrician or a master sign electrician by] showing that the applicant has been supervised for the requisite period by one or more persons licensed [who meet any one of the following:]

~~[(1)] [licensure]~~ by any jurisdiction as a master electrician or master sign electrician as appropriate for the license. [or,]

~~[(2) a person not licensed as an electrician, who during the period of supervision of the applicant, had experience working in a position having overall responsibility for electrical work, or electrical sign work, as appropriate, that is acceptable in the trade for a business that performed such work in an area where no municipal or regional electrical license, or electrical sign license, was required.]~~

(b) Individual applicants may meet requirements for on-the-job training by providing proof of experience gained prior to September 1, 2004 under the supervision of an unlicensed supervisor. That supervisor must have had overall responsibility for electrical work or electrical sign work as was acceptable in the trade for a business in an area where no municipal or regional electrical license or electrical sign license was required. This proof must be submitted in a form acceptable to the department and include:

~~[(b) Proof of a non-licensed supervising person's experience may be established by providing on a form acceptable to the department:]~~

(1) a verified statement from the owner or manager of the [a] business stating [described in subsection (a)(2) of this section,] that the applicant's unlicensed supervisor [supervising person during the period the person supervised electrical work performed by the applicant,] had overall responsibility for electrical work, or electrical sign work, as appropriate, performed by the business during the period of employment reported; or,

(2) a verified statement by the unlicensed supervisor [supervising person] that he or she was the owner of a business [described in subsection (a)(2) of this section] with overall responsibility for work performed by the business, and that he or she supervised the applicant in the performance of electrical work or electrical sign work, as appropriate, during the period of employment reported; or,

(3) when statements described in paragraph (1) and (2) [of this subsection] are not available;

(A) the applicant's verified statement setting out the period of employment, the nature of relevant work provided by the business, the nature of work performed by the applicant, the name and title of supervising persons, that the supervising persons had overall responsibility for electrical work, or electric sign work, as appropriate, and an explanation why a statement under either paragraph (1) or (2) [of this subsection] is not available; and,

(B) documentation showing applicant's relationship to the business for the relevant period, such as:

(i) payroll records;

(ii) applicant's personal tax records; or,

(iii) other records acceptable to the department that provide proof of applicant's relationship to the business for the relevant period.

(c) When the applicant has been supervised by an unlicensed [a non-licensed] person, the existence of the business described in subsection (b) [(a)(2) of this section] must be established by providing documentation for the relevant period, such as:

(1) invoices showing work performed;

(2) tax records of the business;

(3) approval of electrical work, or electrical sign work, as appropriate, by officials from jurisdictions having authority over the work, but where no license was required;

(4) yellow page and newspaper advertisements (must include date); or

(5) other records acceptable to the department that provide proof of the business existence.

(d) A master electrician and master sign electrician shall provide verified documentation of the on-the-job training hours of a person they have supervised upon request of the department.

§73.28. Licensing Requirements--Emergency Licenses.

(a) The executive director may grant emergency electrician licenses when:

(1) in response to an emergency as defined by Gov. Code, §418.004, a state of disaster is declared by;

(A) the Governor pursuant to Gov. Code, §418.014; or,

(B) the presiding officer of the governing body of a local governmental entity pursuant to Gov. Code, §418.108, and,

(2) the executive director determines that a sufficient number of persons holding electrical licenses recognized under Texas Occupations Code, Chapter 1305 is not available to perform electrical work needed to timely respond to the disaster.

(b) To obtain an emergency license, an applicant must:

(1) be currently licensed by another state of the United States to perform electrical work in the licensing state; and,

(2) submit a completed application on a form acceptable to the department, along with appropriate attachments and the required fee.

(c) Emergency licenses will be classified as master, master sign, journeyman, journeyman sign, residential wireman, or maintenance electrician and will be issued to applicants at a level equivalent to the license the applicant holds in another state.

(d) An emergency license will expire ninety days after issuance, and:

(1) is valid only in the disaster area designated by the governor, or in the jurisdiction of a local governmental entity declaring a disaster;

(2) is valid only during the time of a declared disaster and its declared recovery period, if any; and

(3) may be renewed for an additional ninety days if:

(A) the declared disaster and any applicable recovery period continue on the eightieth day of the emergency license;

(B) the executive director determines, at that time, that a sufficient number of persons holding electrical licenses recognized

under Texas Occupations Code, Chapter 1305 is not available to perform electrical work needed to timely respond to the disaster; and,

(C) submits a completed renewal application on a form acceptable to the department, along with appropriate attachments and the required fee.

(e) A person holding an emergency license must perform electrical work:

(1) on behalf of an electrical contractor, an electrical sign contractor, or an employing governmental entity; and,

(2) in compliance with all applicable statutes, administrative rules, and ordinances.

(f) The fee for emergency licenses will be the amount set out in §73.80 for the class of emergency license issued.

§73.40. Insurance Requirements.

(a) Electrical contractors, electrical sign contractors, and residential appliance installation contractors are required to maintain at least the minimum general liability insurance coverages at all times to satisfy proof of financial responsibility.

(1) The insurance must be at least \$300,000 per occurrence (combined for property damage and bodily injury);

(2) be at least \$600,000 aggregate (total amount the policy will pay for property damage and bodily injury coverage); and

(3) be at least \$300,000 aggregate for products and completed operations.

(b) A license applicant or licensee shall file with the department ~~[Department]~~ a completed certificate of insurance or other evidence satisfactory to the department ~~[Department]~~ when applying for initial and renewal licenses and upon request of the department ~~[Department]~~.

(c) Proof of the required general liability and workers' compensation insurance can be submitted on an industry standard certificate of insurance form with a 30-day ~~[30 day]~~ cancellation notice. Workers' compensation coverage may be established by a certificate of authority to self-insure, or an applicant may state that it has elected not to obtain workers' compensation coverage.

(d) A licensed contractor shall furnish the name of the insurance carrier, policy number, name, address, and telephone number of the insurance agent with whom the contractor ~~[contracting company]~~ is insured to any customer who requests it.

(e) Insurance must be obtained from an admitted company or an eligible surplus lines carrier, as defined in the Texas Insurance Code, Chapter 981, or other insurance companies that are rated by A.M. Best Company as B+ or higher.

§73.51. Electrical Contractors' Responsibilities.

(a) An electrical contractor shall:

(1) notify the department when a new master electrician of record is assigned to the contractor and notify the department within thirty business days from the date that the master electrician's employment with the contractor ended;

(2) maintain employee records and records of all work performed on its behalf for a period of four years after completion of the work, and shall make those records available to the department at the contractor's place of business during normal business hours for inspection and copying. If the contractor's principle place of business is located out of the state of Texas, the department may require the contractor to make records available to the department at its offices in Austin,

Texas or another location agreed upon by the department and the contractor.

(b) A person or contractor that performs or offers to perform electrical work shall:

(1) provide safe and proper installation and service, and assure the electro-mechanical integrity of all work and installations are to applicable code;

(2) not misrepresent the need for services, services to be provided, or services that have been provided;

(3) not make a fraudulent promise or false statement to influence, persuade, or induce an individual or a entity to contract for services; and

(4) ensure that all of an electrical contractor's electrical work shall be performed by licensed individuals.

(c) An electrical contractor may subcontract portions of the electrical work requiring a license to other licensed electricians.

(1) the electrical contractor is responsible for compliance with applicable codes for all such electrical work performed by the subcontractor; and

(2) all non-exempt electrical work subcontracted shall be performed by licensed individuals.

(d) The design of an electrical system shall only be done by a licensed master electrician or design professional as authorized by statute. The design shall not be subcontracted to an unlicensed person, firm or corporation.

(e) A licensed electrical contractor shall display its name and license number on both sides of each vehicle owned or operated by the business and used in the conduct of electrical work. Lettering shall be of a contrasting color and at least two inches in height. The license number shall be preceded by the letters "TECL".

(f) All advertising by electrical contracting companies designed to solicit electrical business shall include the electrical contractor's name and license number. This includes business cards. The following advertising does not require the license number:

(1) nationally placed television advertising, in which a statement indicating that license numbers are available upon request is used in lieu of the electrical contractor license number;

(2) telephone book listings that contain only the name, address, and telephone number;

(3) manufacturers' and distributor's telephone book trade ads identifying an electrical contractor;

(4) telephone solicitations, provided the solicitor states that the contractor complies with licensing requirements of the state. The electrical contractor's number must be provided upon request;

(5) promotional items of nominal value such as ball caps, tee shirts, and other gifts; or

(6) signs located on the contractor's permanent business location.

(g) The electrical contractor's name, address, phone number, and license number shall appear on all proposals, invoices, and written contracts from the contractor. The following information: "Regulated by The Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, 1-800-803-9202, 512-463-6599; website: www.license.state.tx.us/complaints" shall be listed on all proposals, invoices, and written contracts.

(h) A licensed electrical contractor and its designated master electrician of record are responsible for supervision of all licensees performing work on behalf of the contractor to assure compliance with applicable statutes and rules and in particular, standards of conduct set out in this chapter.

(i) An electrical contractor shall not use a license that is not assigned to that contractor.

§73.52. Electrical Sign Contractors' Responsibilities.

(a) An Electrical Sign Contractor shall:

(1) notify the department when a new master electrician or master sign electrician of record is assigned to the contractor and notify the department within thirty business days from the date that the master electrician's employment with the contractor ended;

(2) maintain employee records and records of all work performed on its behalf for a period of four years after completion of the work, and shall make those records available to the department at the contractor's place of business during normal business hours for inspection and copying. If the contractor's principle place of business is located out of the state of Texas, the department may require the contractor to make records available to the department at its offices in Austin, Texas or another location agreed upon by the department and the contractor.

(b) A person or contractor that performs or offers to perform electrical sign contracting shall:

(1) provide safe and proper installation and service, and assure the electro-mechanical integrity of all work and installations are to code;

(2) not misrepresent the need for services, services to be provided, or services that have been provided;

(3) not make a fraudulent promise or false statement to influence, persuade, or induce an individual or a entity to contract for services; and

(4) ensure that all of an electrical sign contractor's non-exempt electrical work shall be performed by licensed individuals.

(c) An electrical sign contractor may subcontract portions of the electrical work requiring a license to other licensed electricians.

(1) The electrical sign contractor is responsible for compliance with applicable codes for all such electrical work performed by the subcontractor; and

(2) all non-exempt electrical work subcontracted shall be performed by licensed individuals.

(d) The design of an electrical sign shall only be done by a licensed master electrician, master sign electrician, or design professional as authorized by statute. The design shall not be subcontracted to an unlicensed person, firm or corporation.

(e) A licensed electrical sign contractor shall display its name and license number on both sides of each vehicle owned or operated by the business and used in the conduct of electrical work. Lettering shall be of a contrasting color and at least two inches in height. The license number shall be preceded by the letters "TSCL".

(f) All advertising by electrical sign contracting companies designed to solicit electrical business shall include the electrical sign contractor's name and license number. This includes business cards. The following advertising does not require the license number:

(1) nationally placed television advertising, in which a statement indicating that license numbers are available upon request is used in lieu of the electrical sign contractor license number;

(2) telephone book listings that contain only the name, address, and telephone number;

(3) manufacturers' and distributor's telephone book trade ads identifying an electrical contractor;

(4) telephone solicitations, provided the solicitor states that the contractor complies with licensing requirements of the state. The electrical sign contractor's number must be provided upon request;

(5) promotional items of nominal value such as ball caps, tee shirts, and other gifts; and

(6) signs located on the contractor's permanent business location.

(g) The electrical sign contractor's name, address, phone number, and license number shall appear on all proposals, invoices, and written contracts from the contractor. The following information: "Regulated by The Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, 1-800-803-9202, 512-463-6599; website: www.license.state.tx.us/complaints" shall be listed on all proposals, invoices, and written contracts.

(h) A licensed electrical sign contractor and its designated master electrician or master sign electrician of record are responsible for supervision of all licensees performing work on behalf of the contractor to assure compliance with applicable statutes and rules and in particular, standards of conduct set out in this chapter.

(i) An electrical sign contractor shall not use a license that is not assigned to that contractor.

§73.53. Responsibilities of All Persons Performing Electrical Work.

All persons must perform non-exempt electrical work or non-exempt electrical sign work in compliance with applicable codes and ordinances. The department will interpret applicable codes and ordinances for purposes of enforcement of the Act.

§73.54. Residential Appliance Installation Contractors' Responsibilities.

(a) A residential appliance installation contractor shall:

(1) notify the department when a new residential appliance installer of record is assigned to the contractor and notify the department within thirty business days from the date that the residential appliance installer's employment with the contractor ended;

(2) maintain employee records of all work performed on its behalf for a period of four years after completion of the work, and shall make those records available to the department at the contractor's place of business during normal business hours for inspection and copying. If the contractor's principle place of business is located out of the state of Texas, the department may require the contractor to make records available to the department at its offices in Austin, Texas or another location agreed upon by the department and the contractor.

(b) A person or contractor that performs or offers to perform residential appliance installation work shall:

(1) provide safe and proper installation and service, and assure the electro-mechanical integrity of all work and installations are to code;

(2) not misrepresent the need for services, services to be provided, or services that have been provided;

(3) not make a fraudulent promise or false statement to influence, persuade, or induce an individual or a entity to contract for services; and

(4) ensure that all of a residential appliance installation contractor's non-exempt electrical work shall be performed by licensed individuals.

(c) A residential appliance installation contractor may subcontract portions of the electrical work requiring a license to other licensed electricians.

(1) The residential appliance installation contractor is responsible for compliance with applicable codes for all such electrical work performed by the subcontractor; and

(2) all non-exempt electrical work subcontracted shall be performed by licensed individuals.

(d) A licensed residential appliance installation contractor shall display its name and license number on both sides of each vehicle owned or operated by the business and used in the conduct of electrical work. Lettering shall be of a contrasting color and at least two inches in height. The license number shall be preceded by the letters "TICL".

(e) All advertising by residential appliance installation contracting companies designed to solicit residential appliance installation business shall include the residential appliance installation contractor's name and license number. This includes business cards. The following advertising does not require the license number:

(1) nationally placed television advertising, in which a statement indicating that license numbers are available upon request is used in lieu of the residential appliance installation contractor license number;

(2) telephone book listings that contain only the name, address, and telephone number;

(3) manufacturers' and distributor's telephone book trade ads identifying a residential appliance installation contractor;

(4) telephone solicitations, provided the solicitor states that the contractor complies with licensing requirements of the state. The residential appliance installation contractor's number must be provided upon request;

(5) promotional items of nominal value such as ball caps, tee shirts, and other gifts; and

(6) signs located on the contractor's permanent business location.

(f) The residential appliance installation contractor's name, address, phone number, and license number shall appear on all proposals, invoices, and written contracts from the contractor. The following information: "Regulated by The Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, 1-800-803-9202, 512-463-6599; website: www.license.state.tx.us/complaints" shall be listed on all proposals, invoices, and written contracts.

(g) A licensed residential appliance installation contractor and its designated residential appliance installer of record are responsible for supervision of all licensees performing work on behalf of the contractor to assure compliance with applicable statutes and rules and in particular, standards of conduct set out in this chapter.

(h) A residential appliance installation contractor shall not use a license that is not assigned to that contractor.

§73.60. Standards of Conduct for Engaging in Electrical Work.

(a) Competency. The licensee shall be knowledgeable of and adhere to the Act, the rules, applicable codes, and all procedures established by the department for licensees. It is the obligation of the licensee to exercise reasonable judgment and skill in the performance of all duties and work performed as a licensee.

(b) Integrity. A licensee shall be honest and trustworthy in the performance of all duties and work performed as a licensee, and shall avoid misrepresentation and deceit in any fashion, whether by acts of commission or omission. Acts or practices that constitute threats, coercion, or extortion are prohibited.

(c) Interest. The primary interest of the licensee is to ensure compliance with the Act, the rules, and all applicable codes. The licensee's position, in this respect, should be clear to all parties concerned while in the performance of all duties and work performed as a licensee.

(d) Specific Rules of Conduct. A licensee shall not:

(1) participate, whether alone or in concert with others, in any plan, scheme, or arrangement attempting or having as its purpose the evasion of any provision of the Act, the rules, or the standards adopted by the commission;

(2) furnish inaccurate, deceitful, or misleading information to the department, a consumer, or other person while engaged in the business of electrical contracting, performing, or offering to perform non-exempt electrical work; or

(3) engage in any activity that constitutes dishonesty, misrepresentation, or fraud while performing as a licensee.

§73.65. Advisory Board.

(a) Board meetings are called by the presiding officer. Meetings in excess of those mandated by the Act may be authorized by the executive director [Executive Director].

(b) Expenses reimbursed to board members shall be limited to authorized expenses incurred while on board business and traveling to and from board meetings. The least expensive method of travel should be used. Expenses can be reimbursed to board members only when the legislature has authorized reimbursement for travel [specifically appropriated money for that purpose].

(c) Expenses paid to board members shall be limited to those allowed by the State of Texas Travel Allowance Guide and the Texas Department of Licensing and Regulation policies governing travel allowances for eligible advisory boards [employees].

§73.70. Responsibility of Licensee--Standards of Conduct.

(a) An individual licensee must provide all electrical work requiring a license through a licensed contractor, or employing governmental entity.

(b) The licensee shall accurately and truthfully represent to any prospective client or employer, the licensee's capabilities and qualifications to perform the services to be rendered.

(c) The licensee shall not offer to perform, nor perform, technical services for which the licensee is not qualified by education or experience, without securing the services of another who is qualified.

(d) The licensee shall not evade responsibility to a client or employer.

(e) The licensee shall not agree to perform services if any significant financial or other interest exists that may be in conflict with:

(1) the obligation to render a faithful discharge of such services; or

(2) the service would impair independent judgment in rendering such services.

(f) The licensee should withdraw from employment when it becomes apparent that it is not possible to faithfully discharge the duty and performance of services owed the client or employer, but then only upon reasonable notice to the client or employer. A licensee who does not withdraw must inform the consumer of the facts that give rise to the duty to withdraw.

(g) The licensed contractor shall not engage in advertising that is false, misleading, deceptive, or which does not clearly display the licensee's state license number.

(h) The licensee shall not misrepresent the amount or extent of prior education or experience to any employer or client, or to the department [~~Department~~].

(i) The licensee shall not hold out as being engaged in partnership or association with any person unless a partnership or association exists in fact.

(j) Licensees must abide by all laws and rules regulating electricians, including the Standards of Conduct set forth in this section, within any geographic location in this state when performing or offering to perform electrical work.

§73.80. Fees.

(a) Application fees:

- (1) Master Electrician--\$50
- (2) Master Sign Electrician--\$50
- (3) Journeyman Electrician--\$35
- (4) Journeyman Sign Electrician--\$35
- (5) Residential Wireman--\$25
- (6) Maintenance Electrician--\$25
- (7) Electrical Contractor--\$115
- (8) Electrical Sign Contractor--\$115
- (9) Electrical Apprentice--\$20
- (10) Electrical Sign Apprentice--\$20
- (11) Residential Appliance Installer--~~\$35~~ [\$40]
- (12) Residential Appliance Installation Contractor--~~\$115~~ [\$125]

(b) Renewal fees:

- (1) Master Electrician--\$50
- (2) Master Sign Electrician--\$50
- (3) Journeyman Electrician--\$35
- (4) Journeyman Sign Electrician--\$35
- (5) Residential Wireman--\$25
- (6) Maintenance Electrician--\$25
- (7) Electrical Contractor--\$115
- (8) Electrical Sign Contractor--\$115
- (9) Electrical Apprentice--\$20
- (10) Electrical Sign Apprentice--\$20
- (11) Residential Appliance Installer--\$40
- (12) Residential Appliance Installation Contractor--\$125

(c) Late Renewal Fees. Late renewal fees for licenses issued under this chapter are provided under §60.83 of this title (relating to Late Renewal Fees).

(d) Revised or duplicate license fees:

- (1) All licenses except as set out below--\$25
- (2) Electrical Apprentice--\$20
- (3) Electrical Sign Apprentice--\$20

(e) All fees are non-refundable.

§73.90. Sanctions--Administrative Sanctions/Penalties.

If a person or entity violates any provision of Title 8, Texas Occupations Code, Chapter 1305, any provision of Title 16, Texas Administrative Code, Chapter 73, or any provision of an order of the executive director [~~Executive Director~~] or commission [~~Commission~~], proceedings may be instituted to impose administrative penalties, administrative sanctions, or both administrative penalties and sanctions in accordance with the provisions of Title 8, Texas Occupations Code, Chapters 51 and 1305.

§73.91. Enforcement Authority.

The enforcement authority granted under Texas Occupations Code, Chapters 51 and 1305 and any associated rules may be used to enforce Texas Occupations Code, Chapter 1305 and this chapter.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 4, 2009.

TRD-200903938

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

Earliest possible date of adoption: October 18, 2009

For further information, please call: (512) 463-7348



16 TAC §§73.51 - 73.54, 73.60

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Licensing and Regulation or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The repeals are proposed under Texas Occupations Code, §51.201(b) and §51.203, which authorize the Texas Commission of Licensing and Regulation (Commission), the Department's governing body, to adopt rules as necessary to implement Chapter 51 and any other law establishing a program regulated by the Department. Also, the repeal is proposed under Texas Occupations Code, Chapter 1305 which authorizes the Executive Director of the Department and the Commission to adopt rules as necessary to implement this chapter.

The statutory provisions affected by the repeals are those set forth in Texas Occupations Code, Chapters 51 and 1305.

No other statutes, articles, or codes are affected by the repeals.

§73.51. Electrical Contractors' Responsibilities.

§73.52. Electrical Sign Contractor's Responsibilities.

§73.53. *Licensees' Responsibilities.*

§73.54. *Residential Appliance Installation Contractors' Responsibilities.*

§73.60. *Standards of Conduct for Licensee.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 4, 2009.

TRD-200903939

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

Earliest possible date of adoption: October 18, 2009

For further information, please call: (512) 463-7348



TITLE 22. EXAMINING BOARDS

PART 3. TEXAS BOARD OF CHIROPRACTIC EXAMINERS

CHAPTER 71. APPLICATIONS AND APPLICANTS

22 TAC §71.17

The Texas Board of Chiropractic Examiners (Board) proposes new §71.17, Temporary Faculty License, to comply with the requirements of HB 3450, 81st Legislature, Regular Session. HB 3450 amended the Chiropractic Act (Texas Occupations Code §201.308) to allow the Board to issue temporary faculty licenses to qualified faculty members at Parker Chiropractic College and Texas College of Chiropractic and requires the Board to adopt rules, forms and fees for that purpose.

Glenn Parker, Executive Director of the Texas Board of Chiropractic Examiners, has determined that for each year of the first five years that this rule is in effect there will be no additional cost to state or local governments.

Mr. Parker has also determined that for each year of the first five years that this rule is in effect the public benefit will be that chiropractic colleges in Texas may be able to more easily hire faculty members with broader experiences and better overall qualifications, thereby leading to better education of the students. Mr. Parker has also determined that there will be no adverse economic effect to individuals, small or micro businesses, during the first five years that this rule will be in effect, other than the new fees to be paid by the chiropractic colleges or faculty members, as required by HB 3450.

Comments on the proposal and/or a request for a public hearing on the proposed rule may be submitted to Glenn Parker, Executive Director, Texas State Board of Chiropractic Examiners, 333 Guadalupe St., Tower III, Suite 825, Austin, Texas 78701, (512) 305-6705 fax, no later than 30 days from the date that this proposal is published in the *Texas Register*.

The rule is proposed under Texas Occupations Code §201.152, relating to rules. Section 201.152 authorizes the Board to adopt rules necessary to regulate the practice of chiropractic. Section

201.308 requires the board to adopt rules to issue temporary licenses to qualified members of the faculty of Parker Chiropractic College and Texas College of Chiropractic.

No other statutes, articles, or codes are affected by the proposed rule.

§71.17. Temporary Faculty License.

(a) The board may issue a temporary faculty license to a person that meets the requirements set forth under Texas Occupations Code §201.308.

(b) An applicant for a temporary faculty license under this section shall apply to the board, in writing, on a form prescribed by the board, prior to beginning work at the sponsoring school. The application shall be submitted on the applicant's behalf by the sponsoring school and shall be signed by either the dean of the chiropractic school or the president of the institution.

(c) In order to receive a license under this section, a person must sign and agree to the following oath: "I affirm that have read and that I am familiar with the Texas Chiropractic Act and the Board's rules. I affirm that I will abide by the requirements of the Act and the Board's rules while practicing under this license. I acknowledge that this license grants me a limited privilege to practice chiropractic in Texas and that while practicing under this license I will be subject to the oversight and disciplinary authority of the Board and my sponsoring chiropractic school."

(d) A person practicing under a temporary faculty license may either apply for a renewal of that license or apply for a permanent unrestricted license as provided for under this chapter. If a person has filed either an application for renewal or an application for a permanent unrestricted license, a person may continue to practice under an expired temporary faculty license while the board is evaluating the person's application and while waiting for the results of any examination required for permanent licensure.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 3, 2009.

TRD-200903933

Glenn Parker

Executive Director

Texas Board of Chiropractic Examiners

Earliest possible date of adoption: October 18, 2009

For further information, please call: (512) 305-6901



CHAPTER 75. RULES OF PRACTICE

22 TAC §75.17

The Texas Board of Chiropractic Examiners (Board) proposes an amendment to §75.17(e)(2)(K) to clarify the classes of lasers that licensed doctors of chiropractic may use to provide therapeutic care for a patient. The current rule is vague and without scientific value in identifying the kinds of lasers that may be used. The proposed rule amendment would allow an adequately trained licensee to use lasers in the therapeutic treatment of patients provided that the licensee has received adequate training in the use of the laser and appropriate safety precautions; that the patient, the licensee and all others present are provided with

appropriate safety devices; and that the laser is used within the chiropractic scope of practice in Texas.

Glenn Parker, Executive Director of the Texas Board of Chiropractic Examiners, has determined that for each year of the first five years that this amended rule is in effect there will be no additional cost to state or local governments.

Mr. Parker has also determined that for each year of the first five years that this amended rule is in effect the public benefit will be greater clarity in the types of therapeutic laser equipment that a licensed doctor of chiropractic may provide for his or her patients and that patients will receive care more appropriate to their needs. Mr. Parker has also determined that there will be no adverse economic effect to individuals, small or micro businesses during the first five years that this amended rule will be in effect as this rule imposes no burdens.

Comments on the proposed amendment to §75.17 and/or a request for a public hearing on the proposed rule amendment may be submitted to Glenn Parker, Executive Director, Texas State Board of Chiropractic Examiners, 333 Guadalupe St., Tower III, Suite 825, Austin, TX 78701, (512) 305-6705 fax, no later than 30 days from the date that this proposed amendment is published in the *Texas Register*.

The rule amendment is proposed under Texas Occupations Code §201.152, relating to rules. Section 201.152 authorizes the Board to adopt rules necessary to regulate the practice of chiropractic. Section 201.1525 requires the board to adopt rules that clarify the scope of practice for chiropractors.

No other statutes, articles, or codes are affected by the proposed rule amendment.

§75.17. *Scope of Practice.*

(a) - (d) (No change.)

(e) Treatment Procedures and Services

(1) (No change.)

(2) In order to provide therapeutic care for a patient or patient population, licensees are authorized to use:

(A) - (J) (No change.)

(K) Therapeutic lasers, with adequate training and the use of appropriate safety devices and procedures for the patient, the licensee and all other persons present during the use of the laser; [cold or low-level light laser;]

(L) - (Q) (No change.)

(3) (No change.)

(f) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 3, 2009.

TRD-200903932

Glenn Parker

Executive Director

Texas Board of Chiropractic Examiners

Earliest possible date of adoption: October 18, 2009

For further information, please call: (512) 305-6901

PART 9. TEXAS MEDICAL BOARD

CHAPTER 180. REHABILITATION ORDERS

The Texas Medical Board (Board) proposes the repeal of §180.1, concerning Rehabilitation Orders, and adding new sections to Chapter 180, concerning Texas Physician Health Program and Rehabilitation Orders, §§180.1 - 180.3 and 180.7.

Elsewhere in this issue of the *Texas Register*, the Board contemporaneously adopts the repeal and replacement of Chapter 180 on an emergency basis.

The repeal of §180.1, relating to Rehabilitation Orders, repeals this provision.

New §180.1, concerning Purpose, establishes the statutory authority and the purpose for the Texas Physician Health Program and the use of rehabilitation orders.

New §180.2, concerning Definitions, establishes definitions that pertain to the Texas Physician Health Program.

New §180.3, concerning Texas Physician Health Program, establishes the qualifications and responsibilities for the governing board, physician health advisory committee, and medical director of the Texas Physician Health Program.

New §180.7, concerning Rehabilitation Orders, provides that rehabilitation orders entered into on or before January 1, 2010 shall be subject to all laws that existed immediately before that date as they relate to rehabilitation orders.

Nancy Leshikar, General Counsel for the Board, has determined that for each year of the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing the repeal of §180.1, will be none, as this section is to be adopted as a new rule under §180.7. The public benefit anticipated as a result of enforcing new §180.1, will be to establish a confidential Texas Physician Health Program to address physician mental health and substance abuse issues and encourage licensees to receive treatment for mental health and substance abuse issues before patient safety is compromised. The public benefit anticipated as a result of enforcing new §180.2, will be to establish definitions for the program and provide that all licensees of the agency are subject to this chapter. The public benefit anticipated as a result of enforcing new §180.3, will be to ensure that the program is overseen by other licensees, stakeholders, and experts in mental health and substance abuse issues who will create the requirements for the program and provide a course of treatment for licensees and monitor their progress through the program. The public benefit anticipated as a result of enforcing new §180.7, is to ensure that licensees who are under a rehabilitation order prior to or on January 1, 2010 are monitored by the agency until the licensees are enrolled in the Texas Physician Health Program.

Ms. Leshikar has also determined that for the first five-year period the sections are in effect there will be no fiscal implications to state or local government as a result of enforcing the sections as proposed. The effect to individuals required to comply with the rules as proposed will be the payment of annual fees and other costs related to participation in the program. There will be no effect on small or micro businesses.

Comments on the proposals may be submitted to Sally Durocher, P.O. Box 2018, Austin, Texas 78768-2018, or e-mail comments

to: rules.development@tmb.state.tx.us. A public hearing will be held at a later date.

22 TAC §180.1

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Medical Board or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The repeal is proposed under the authority of the Texas Occupations Code Annotated, §§153.001, 204.101, 205.101, and 206.101 which provide authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

The repeal is also authorized by §153.001, Texas Occupations Code.

Sections 167.001 - 167.011, Texas Occupations Code, are affected by this proposal.

§180.1. Rehabilitation Orders.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 1, 2009.

TRD-200903880

Mari Robinson, J.D.

Interim Executive Director

Texas Medical Board

Earliest possible date of adoption: October 18, 2009

For further information, please call: (512) 305-7016



CHAPTER 180. TEXAS PHYSICIAN HEALTH PROGRAM AND REHABILITATION ORDERS

22 TAC §§180.1 - 180.3, 180.7

The new rules are proposed under the authority of the Texas Occupations Code Annotated, §§153.001, 204.101, 205.101, and 206.101 which provide authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

The new rules are also authorized by §153.001, Texas Occupations Code.

Sections 167.001 - 167.011, Texas Occupations Code, are affected by this proposal.

§180.1. Purpose.

Purpose of chapter. The purpose of this chapter is to establish the Texas Physician Health Program for the purpose of encouraging the wellness of program participants pursuant to the Medical Practice Act ("Act"), Texas Occupations Code Annotated §§167.001 - 167.011.

§180.2. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Acupuncture Board--Texas State Board of Acupuncture Examiners.

(2) Committee--the Physician Health and Rehabilitation Advisory Committee.

(3) Governing board--the governing board of the program.

(4) Medical Board--the Texas Medical Board.

(5) Medical director--a physician licensed by the board who has expertise in a field of medicine relating to disorders commonly affecting physicians or physician assistants, including substance abuse disorders, and who provides clinical and policy oversight for the program.

(6) PA Board--the Texas Physician Assistant Board.

(7) Program--the Texas Physician Health Program.

(8) Program participant--a physician, physician assistant, acupuncturist, or surgical assistant who is licensed or who has applied for licensure and who receives services under the program.

§180.3. Texas Physician Health Program.

(a) Governing Board.

(1) Appointments.

(A) The president of the Medical Board in consultation with the presiding chair of the PA Board, and with the advice of stakeholders, shall appoint 11 qualified individuals with good professional character to serve on the governing board of the program.

(B) The appointees shall include physicians, physician assistants, and other related professionals with experience addressing health conditions commonly found in the population of monitored licensees.

(C) The appointees shall include:

(i) six physicians actively licensed in Texas who are doctors of medicine (M.D.) and have been in practice for at least five years;

(ii) two physicians actively licensed in Texas who are doctors of osteopathic medicine (D.O.) and have been in practice for at least five years;

(iii) one physician assistant who is actively licensed by the PA Board and has been in practice for at least five years;

(iv) one other licensed mental health professional with appropriate experience; and

(v) one member of the public who meets the same requirements as public members of the Medical Board as provided under §152.003 of the Texas Occupations Code.

(D) Appointees shall serve staggered six-year terms and may be reappointed by the president after completion of a term.

(E) Appointees may not:

(i) serve on a county medical society committee on physician health and rehabilitation;

(ii) have patient populations that include program participants.

(F) An appointee may be removed if:

(i) grounds for removal exist under §152.006 of the Texas Occupations Code;

(ii) the appointee fails to meet the standards of professional conduct under §161.3 of this title (relating to Organization and Structure); or

(iii) the appointee does not otherwise meet the requirements of this chapter.

(G) If there is a vacancy on the governing board, the Medical Board president in consultation with the presiding chair of the PA Board and with the advice of stakeholders may appoint a new board member.

(H) The presiding officer of the Governing Board shall be appointed by the Medical Board president.

(2) Responsibilities of the Governing Board. The governing board shall:

(A) provide advice and counsel to the Medical Board; and

(B) establish policy and procedures for the operation and administration of the program.

(3) Conflicts of Interest. A governing board member should avoid conflicts of interest. If a conflict of interest should unintentionally occur, the governing board member should recuse himself or herself from participating in any matter that could be affected by the conflict.

(b) Physician Health and Rehabilitation Advisory Committee.

(1) Appointments.

(A) The governing board shall appoint physicians and mental health care providers actively licensed in Texas with at least five years experience in disorders commonly affecting program participants to the Physician Health and Rehabilitation Advisory Committee.

(B) Appointees shall serve at the pleasure of the Governing Board.

(C) If there is a vacancy on the committee, the Governing Board with the advice of the president of the Medical Board and the presiding officer of the PA Board may appoint a new committee member.

(2) Responsibilities of the Committee. The committee shall provide opinions upon request of the governing board or program staff.

(3) Conflicts of Interest.

(A) A committee member should avoid conflicts of interest. If a conflict of interest should unintentionally occur, the committee member should recuse himself or herself from participating in any matter that could be affected by the conflict.

(B) A committee member must request to be recused in any decision relating to a program participant that the committee member had treated or is currently treating.

(c) Medical Director Qualifications. The medical director:

(1) serves at the pleasure of the Medical Board;

(2) must be licensed by the Medical Board;

(3) must have expertise in a field of medicine relating to disorders commonly affecting program participants; and

(4) may not treat or supervise a program participant.

§180.7. Rehabilitation Orders.

(a) Rehabilitation orders entered into on or before January 1, 2010, shall be governed by this section only.

(b) Purposes of rehabilitation orders.

(1) To provide an incentive to a licensee or applicant to seek early assistance with drug or alcohol-related problems or mental or physical conditions that present a potentially dangerous limitation or inability to practice medicine with reasonable skill and safety.

(2) To protect the public by requiring the impaired licensee or applicant to obtain treatment and/or limit or refrain from the practice of medicine while suffering from an impairment.

(c) Eligibility for rehabilitation order. The board may issue a rehabilitation order for a licensee or applicant, as a prerequisite for issuing a license, for the following reasons:

(1) intemperate use of drugs or alcohol directly resulting from habituation or addiction caused by medical care or treatment provided by a physician;

(2) the licensee or applicant self-reported intemperate use of drugs or alcohol as set out in subsection (f) of this section, and has not previously been the subject of a substance abuse-related order of the board;

(3) a court has determined that the licensee or applicant is of unsound mind;

(4) the licensee or applicant has an impairment as determined by a mental or physical examination; or

(5) an admission by the licensee or applicant of an illness or a physical or mental condition that limits or prevents the person's practice of medicine with reasonable skill and safety.

(d) Factors for board consideration in proposing a rehabilitation order.

(1) General. In determining whether to recommend a rehabilitation order to an otherwise eligible licensee or applicant, the board shall consider all relevant factors.

(2) Federal and state drug and alcohol laws. Absent a showing of good cause by the licensee or applicant, the board may not grant a rehabilitation order if any of the following factors exist:

(A) the licensee or applicant has been found guilty, pled guilty, or received deferred adjudication of any felony or misdemeanor related to the intemperate use of drugs or alcohol at issue;

(B) the licensee or applicant was required to or voluntarily surrendered his/her drug license(s) or certification(s) issued by the Federal Drug Enforcement Administration (DEA), Texas Department of Public Safety (DPS) or comparable authority of another state in connection with a criminal investigation related to the intemperate use of drugs or alcohol at issue; and

(C) the licensee's or applicant's intemperate use of drugs or alcohol led to a violation of Chapters 481 and 483 of the Texas Health and Safety Code or a violation of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. §801 et seq.).

(3) The licensee or applicant and board staff may present information to the Board's representatives relevant to whether any violation of the standard of care is a result of the intemperate use of drugs or alcohol. The Board's representatives may not recommend a confidential rehabilitation order if they determine that a violation of the standard of care was a result of the intemperate use of drugs or alcohol. The board shall have complete discretion to determine whether any violation of the standard of care was a result of the intemperate use of drugs or alcohol.

(4) Additional factors to be established by a licensee or applicant. Licensees or applicants otherwise eligible for a rehabilitation

order should provide evidence of the following factors to be considered by the board prior to the board proposing a rehabilitation order:

(A) steps taken to prevent potential future harm to the public that may include a treatment and monitoring plan;

(B) existence of rehabilitative potential;

(C) a clinical diagnosis of a physical or mental condition and supporting medical records;

(D) that the licensee or applicant cooperated with board staff during the course of the investigation; and

(E) applicability of any other mitigating factors set forth in §190.15(b) of this title (relating to Aggravating and Mitigating Factors).

(5) Additional factors to be established by board staff. If applicable, board staff shall present evidence of the following factors to be considered by the board prior to the board proposing a rehabilitation order:

(A) intemperate use of drugs or alcohol by the licensee or applicant in a manner affecting the standard of care;

(B) a complaint alleging intemperate use of drugs or alcohol by the licensee or applicant in a manner affecting the standard of care has been received by the board, and the status of the investigation of the complaint;

(C) licensee or applicant caused harm to any individual or entity;

(D) licensee or applicant has a disciplinary history, including criminal convictions, disciplinary orders with board or other state medical boards, disciplinary actions by other state or federal regulatory agencies, and peer review actions by hospitals or medical societies;

(E) licensee or applicant inappropriately self-treated or self-prescribed;

(F) licensee or applicant violated provisions of the Act other than §§164.051(a)(4), (a)(5) and 164.052(a)(5);

(G) applicability of any other aggravating factors set forth in §190.15(a) of this title.

(e) Concurrent public agreed order. The board may approve a public agreed order that does not relate to standard of care violations to run concurrently with any confidential rehabilitation order, authorized by this section.

(f) Requirements for self-reports. To be eligible for a rehabilitation order based on a self-report of intemperate use of drugs or alcohol:

(1) the self-report must have been made to the board:

(A) within five years after the last commission of intemperate use of drugs or alcohol;

(B) before the filing of any criminal charges involving drugs or alcohol use; and

(C) before the board receives a complaint or other report of intemperate use;

(2) the licensee or applicant making the self-report has no prior board orders based on use of drugs or alcohol;

(3) the licensee or applicant has not committed a violation of the standard of care as a result of the intemperate use of drugs or alcohol;

(4) no valid complaint with regard to the licensee or applicant based on intemperate use of drugs or alcohol in a manner affecting the standard of care has been received by the board prior to the time the licensee or applicant signs the proposed rehabilitation order. If the board receives any complaint regarding the standard of care before the licensee or applicant signs the proposed rehabilitation order, the licensee or applicant is not eligible for a rehabilitation order unless the board makes a determination that the licensee or applicant did not violate the standard of care as a result of the intemperate use of drugs or alcohol;

(5) self-reports of intemperate use of drugs or alcohol by licensees or applicants must be made through a written statement by the licensee or applicant, or the authorized agent of the licensee or applicant, submitted to the board or board staff by mail, email, messenger, telefacsimile transmission, or hand-delivery. The self-report may be made through responses provided as part of an application for a license or writing submitted for purposes of licensure renewal; and

(6) the licensee or applicant must provide a complete self-report of the intemperate use of alcohol or drugs that includes, but is not limited to, the following information:

(A) the approximate dates of intemperate use;

(B) the extent of intemperate use;

(C) the substance(s) used;

(D) the method(s) of ingestion;

(E) all history of substance abuse treatment to include approximate dates of treatment and the specific locations where treatment was received; and

(F) a description of any incident that a reasonably prudent physician would believe could result in an allegation of the physician's violation of the standard of care that occurred during the time of intemperate use or, if no violation of the standard of care has occurred, a statement that no violation of the standard of care occurred during the time of intemperate use.

(g) Guidelines for determination of a mental or physical condition.

(1) Mental condition. Absent a showing of good cause, a licensee or applicant suffering from a mental condition should provide evidence to the board, including medical records, of a clinical diagnosis by a physician or mental health care provider of a condition listed under DSM-IV.

(2) Physical condition. Absent a showing of good cause, a licensee or applicant suffering from a physical condition should provide evidence to the board, including medical records, of a clinical diagnosis by a physician.

(3) Additional factors for consideration. A licensee's or applicant's diagnosis shall be considered along with the licensee's or applicant's:

(A) current and past levels of functioning;

(B) concurrent medical disorders;

(C) complicating factors such as substance-related disorders;

(D) compliance with treatments;

(E) response to treatment;

(F) prognosis; and

(G) stage of recovery from the illness.

(4) Hearing. An informal show compliance proceeding shall be considered an evidentiary hearing for the purposes of this subsection and in accordance with §164.202 of the Act.

(h) Confidentiality. Consideration of proposed agreed rehabilitation orders shall be conducted so as to keep the identity of the licensee or applicant confidential.

(1) Confidentiality may be preserved through one or more of the following:

(A) confidential informal show compliance proceedings;

(B) confidential modification and termination requests and proceedings;

(C) executive sessions by the board and board committee; and/or,

(D) redaction of identifying information when such orders are considered in open session.

(2) The rehabilitation order may require the licensee or applicant to participate in activities or programs provided by a local or statewide private medical association. If the board makes such a requirement, the board shall:

(A) inform the association of the licensee's duties under the order, including specific guidance to enable the association to comply with any requirements necessary to assist in the physician's rehabilitation;

(B) provide to the association any information, including confidential information, that the board determines to be necessary, including a copy of the rehabilitation order; and

(C) advise the association that the information provided by the board is and remains confidential, is not subject to discovery, subpoena, or other means of legal compulsion, and may be disclosed only to the board, in accordance with §164.205(b), Texas Occupations Code.

(3) The board, board staff, and agents of the board will attempt in good faith to ensure that the terms and conditions of a rehabilitation order remain confidential. However, in order to ensure compliance with a rehabilitation order, it may be necessary to disrupt the activities of a licensee or applicant and to contact the licensee or applicant, including but not limited to telephone calls, mail, or unannounced visits to the licensee's or applicant's place of employment or residence.

(4) Upon a determination by the board that licensee or applicant has violated a rehabilitation order, the rehabilitation order may become a public document and subject to the Texas Public Information Act.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 1, 2009.

TRD-200903879

Mari Robinson, J.D.

Interim Executive Director

Texas Medical Board

Earliest possible date of adoption: October 18, 2009

For further information, please call: (512) 305-7016

◆ ◆ ◆

PART 21. TEXAS STATE BOARD OF EXAMINERS OF PSYCHOLOGISTS

CHAPTER 463. APPLICATIONS AND EXAMINATIONS

22 TAC §463.7

The Texas State Board of Examiners of Psychologists proposes amendments to §463.7, Criminal History Record Reports. The amendments are being proposed to establish the requirement that all licensees must provide a fingerprint criminal history record check to the Board.

Sherry L. Lee, Executive Director, has determined that for the first five-year period the amendments will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed amendments.

Ms. Lee also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be to help the Board protect the public. There will be no effect on small businesses. The anticipated economic cost to persons who are required to comply with the rule as proposed is that they will be required to pay for their fingerprints to be digitized.

Comments on the proposal may be submitted to Brenda Skiff, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Suite 2-450, Austin, TX 78701, (512) 305-7700 or email Brenda.skiff@tsbep.state.tx.us.

The amendments are proposed under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

No other code, articles or statutes are affected by this section.

§463.7. Criminal History Record Reports.

(a) - (c) (No change.)

(d) Each licensee who was not required to submit a fingerprint criminal history record report as a condition of licensure must submit a fingerprint criminal history record report to the Board as a condition for renewal. This one-time renewal requirement begins September 1, 2010 and will be phased in with approximately one-fourth of licensees required to submit their reports in the first fiscal year and remaining licensees required to submit their reports in the following three fiscal years as prescribed by the Board. A report must be received by the Board before the eligible licensee is allowed to renew the license.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 2, 2009.

TRD-200903900

Sherry L. Lee

Executive Director

Texas State Board of Examiners of Psychologists

Earliest possible date of adoption: October 18, 2009

For further information, please call: (512) 305-7706

◆ ◆ ◆

CHAPTER 465. RULES OF PRACTICE

22 TAC §465.2

The Texas State Board of Examiners of Psychologists proposes amendments to §465.2, Supervision. The amendments being proposed will clarify that the duty of a supervisor includes ensuring that their supervisees provide psychological services in a legal manner.

Sherry L. Lee, Executive Director, has determined that for the first five-year period the amendments will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed amendments.

Ms. Lee also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be to help the Board protect the public. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Brenda Skiff, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Suite 2-450, Austin, TX 78701, (512) 305-7700 or email Brenda.skiff@tsbep.state.tx.us.

The amendments are proposed under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

No other code, articles or statutes are affected by this section.

§465.2. *Supervision.*

- (a) (No change.)
- (b) Licensees ensure that their supervisees have legal authority to provide psychological services in adherence to Board rules.
- (c) [~~(b)~~] Licensees provide an adequate level of supervision to all individuals under their supervision according to accepted professional standards given the experience, skill and training of the supervisee and the type of psychological services.
- (d) [~~(e)~~] Licensees must be competent to perform any psychological services being provided under their supervision.
- (e) [~~(d)~~] Licensees shall document their supervision activities in writing.
- (f) [~~(e)~~] Licensees delegate only those responsibilities that supervisees may legally and competently perform.
- (g) [~~(f)~~] Licensees utilize methods of supervision that enable the licensee to monitor all delegated services for legal, competent, and ethical performance.
- (h) [~~(g)~~] For purposes of this rule, the term "supervision" does not apply to the supervision of purely administrative or employment matters.
- (i) [~~(h)~~] Licensed psychological associates and provisionally licensed psychologists must be under the supervision of a licensed psychologist and may not engage in independent practice.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 2, 2009.

TRD-200903901

Sherry L. Lee

Executive Director

Texas State Board of Examiners of Psychologists

Earliest possible date of adoption: October 18, 2009

For further information, please call: (512) 305-7706

◆ ◆ ◆

CHAPTER 469. COMPLAINTS AND ENFORCEMENT

22 TAC §469.7

The Texas State Board of Examiners of Psychologists proposes amendments to §469.7, Persons with Criminal Backgrounds. The amendments are being proposed to ensure the protection and safety of the public.

Sherry L. Lee, Executive Director, has determined that for the first five-year period the amendments will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed amendments.

Ms. Lee also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be to help the Board protect the public. There will be no effect on small businesses. The anticipated economic cost to persons who make a request to the Board under the rule as proposed is that they will be required to pay a fee for this service.

Comments on the proposal may be submitted to Brenda Skiff, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Suite 2-450, Austin, TX 78701, (512) 305-7700 or email Brenda.skiff@tsbep.state.tx.us.

The amendments are proposed under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

No other code, articles or statutes are affected by this section.

§469.7. *Persons with Criminal Backgrounds.*

- (a) (No change.)
- (b) Criminal History Evaluation Letters.
 - (1) In compliance with Chapter 53 of the Texas Occupations Code, the Board will provide criminal history evaluation letters.
 - (2) A person may request the Board to provide a criminal history evaluation letter if the person is planning to enroll or is enrolled in an educational program that prepares the person for a license with this Board and the person has reason to believe that the person is ineligible for licensure due to a conviction or deferred adjudication for a felony or misdemeanor offense.
 - (3) The requestor must submit to the Board a completed Board application form requesting an evaluation letter, the required fee, and certified copies of court documentation about all convictions and resolution to the Board.

(4) Before submitting the application the requestor must obtain a fingerprint criminal history record check and have it mailed directly to the Board.

(5) The Board has the authority to investigate a request for a criminal history evaluation letter and may require that the requestor provide additional information about the convictions and other dispositions if requested by the Board.

(6) The Board will provide a written response to the requestor within 90 days of the Board's receipt of the request, unless a more extensive investigation is required or the requestor fails to comply with a Board investigation. The Board's evaluation letter will state the Board's determination on each ground for potential ineligibility presented by the requestor.

(7) In the absence of new evidence known to but not disclosed by the requestor or not reasonably available to the Board at the time the letter is issued, the Board's ruling on the request determines the requestor's eligibility only with respect to the grounds for potential ineligibility set out in the letter.

(c) [(b)] The Board shall revoke an existing valid license, disqualify a person from receiving or renewing a license, or deny to a person the opportunity to be examined for a license due to a felony conviction under Section 35A.02 of the Texas Penal Code, concerning Medicaid fraud.

(d) [(e)] No person currently serving a sentence in prison for a felony is eligible to obtain or renew his/her license.

(e) [(d)] In determining whether a criminal conviction directly relates to the performance of a licensee, the Board shall consider the factors listed in the Texas Occupations Code, Chapter 53.

(f) [(e)] Those crimes which the Board considers as directly related to the performance of a licensee include but are not limited to:

(1) a misdemeanor and/or felony offense under the following titles of the Texas Penal Code:

(A) Title 5, pertaining to offenses against the person (for example, homicide, kidnapping, sexual offenses, and assaultive offenses);

(B) Title 7, pertaining to offenses against property (for example, arson, robbery, burglary, theft, fraud, money laundering, and insurance fraud);

(C) Title 8, pertaining to offenses against public administration (for example, bribery, perjury, and obstruction of justice);

(D) Title 9, pertaining to offenses against public order and decency (for example, disorderly conduct and public indecency);

(E) Title 10, pertaining to offenses against public health and safety (for example, weapons offenses, gambling, and intoxication offenses); and

(F) Title 4, pertaining to the offenses of attempting or conspiring to commit the offenses listed in subsections (a) - (e) of this section.

(2) any criminal violation of the Psychologists' Licensing Act or other statutes regulating or pertaining to the profession of psychology;

(3) any criminal violation of statutes regulating other professions in the healing arts, which includes, but is not limited to medicine and nursing;

(4) any crime involving moral turpitude;

(5) any offense involving the failure to report abuse;

(6) any state or federal drug offense, including violations of the Controlled Substances and Dangerous Drugs Act; and

(7) any other misdemeanor or felony that the Board may consider in order to promote the public safety and welfare, as well as the intent of the Act and these rules.

(g) [(f)] In determining whether a criminal conviction directly affects present fitness of the licensee, the Board shall consider the factors listed in Texas Occupations Code, Section 53.023.

(h) [(g)] It shall be the responsibility of the licensee to secure and provide to the Board the recommendations of the prosecution, law enforcement, and correctional authorities regarding all criminal offenses.

(i) [(h)] The licensee shall also furnish proof in such form as may be required by the Board that he/she maintained a record of steady employment and has supported his/her dependents and has otherwise maintained a record of good conduct and has paid all outstanding court costs, supervision fees, fines and restitution as may have been ordered in all criminal cases in which he/she has been convicted.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 2, 2009.

TRD-200903902

Sherry L. Lee

Executive Director

Texas State Board of Examiners of Psychologists

Earliest possible date of adoption: October 18, 2009

For further information, please call: (512) 305-7706



CHAPTER 470. ADMINISTRATIVE PROCEDURE

22 TAC §470.2

The Texas State Board of Examiners of Psychologists proposes amendments to §470.2, Definitions. The amendments are being proposed to clarify the Board's status as a public health agency.

Sherry L. Lee, Executive Director, has determined that for the first five-year period the amendments will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed amendments.

Ms. Lee also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be to help the Board protect the public. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Brenda Skiff, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Suite 2-450, Austin, TX 78701, (512) 305-7700 or email Brenda.skiff@tsbep.state.tx.us.

The amendments are proposed under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make

all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

No other code, articles or statutes are affected by this section.

§470.2. Definitions.

The following terms have the following meanings:

(1) Act--The Psychologists' Licensing Act, Texas Occupations Code, Title 3, Subtitle I, Chapter 501.

(2) - (22) (No change.)

(23) Public health agency--The Board is a public health agency.

(24) [(23)] Respondent--An individual over whom the Board has jurisdiction and against whom a complaint is filed.

(25) [(24)] Rule--Any agency statement of general applicability that implements or prescribes law or policy by defining general standards of conduct, rights, or obligations of persons, or describes the procedure or practice requirements that prescribe the manner in which public business before an agency may be initiated, scheduled, or conducted, or interprets or clarifies law or agency policy, whether with or in the absence of an explicit grant of power to the agency to make rules. The term includes the amendment or repeal of a prior rule but does not include statements concerning only the internal management or organization of the agency and not affecting private rights or procedures. This definition includes regulations.

(26) [(25)] State Office of Administrative Hearings (SOAH)--The agency to which contested cases are referred by the Texas State Board of Examiners of Psychologists.

(27) [(26)] Texas Public Information Act--Texas Government Code, Chapter 552.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 2, 2009.

TRD-200903903

Sherry L. Lee

Executive Director

Texas State Board of Examiners of Psychologists

Earliest possible date of adoption: October 18, 2009

For further information, please call: (512) 305-7706



CHAPTER 473. FEES

22 TAC §473.5

The Texas State Board of Examiners of Psychologists proposes amendments to §473.5, Miscellaneous Fees (Not Refundable). The amendments are being proposed to comply with new state law (Texas Occupations Code, Chapter 53, Subchapter D) requiring licensing entities to provide preliminary evaluations of eligibility for licensure for persons with criminal records.

Sherry L. Lee, Executive Director, has determined that for the first five-year period the amendments will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed amendments.

Ms. Lee also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be to help the Board protect the public. There will be no effect on small businesses. The anticipated economic cost to persons requesting an evaluation letter is that they are required to pay a fee to the Board.

Comments on the proposal may be submitted to Brenda Skiff, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Suite 2-450, Austin, TX 78701, (512) 305-7700 or email Brenda.skiff@tsbep.state.tx.us.

The amendments are proposed under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

No other code, articles or statutes are affected by this section.

§473.5. Miscellaneous Fees (Not Refundable).

(a) Duplicate or Replacement License--\$25.

(b) Inactive status (two-year period)--\$100.

(c) Remailing of license--\$10.

(d) Returned check fee--\$25.

(e) Returned renewal application fee--\$10.

(f) Analysis of jurisprudence examination--\$50.

(g) Cost of destroyed, lost or stolen annual renewal permits--\$10.

(h) Cost of replacement renewal notice--\$10.

(i) Limited Temporary License--\$100.

(j) Preliminary Evaluation for Eligibility for Licensure of Person with Criminal Record--\$150.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 2, 2009.

TRD-200903904

Sherry L. Lee

Executive Director

Texas State Board of Examiners of Psychologists

Earliest possible date of adoption: October 18, 2009

For further information, please call: (512) 305-7706



TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 1. GENERAL LAND OFFICE

CHAPTER 10. EXPLORATION AND DEVELOPMENT OF STATE MINERALS OTHER THAN OIL AND GAS

31 TAC §§10.1 - 10.9

The General Land Office (GLO) proposes amendments to §§10.1 - 10.9, concerning Exploration and Development of State Minerals Other than Oil and Gas.

The GLO proposes amendments to §10.1, relating to Definitions; Exploration and Development Guide. The GLO proposes to add a new definition at §10.1(a)(5) for mineral. The GLO proposes to renumber the paragraphs following the new paragraph to the definition section. The GLO proposes to amend renumbered §10.1(a)(13) by adding the words "if any" to the paragraph. The GLO proposes to amend §10.1(b)(1)(B) by deleting the words "and shell, sand, and gravel" from the subparagraph.

The GLO proposes amendments to §10.2, relating to Prospect Permits on State Lands. The GLO proposes to add a new subsection (b) and reletter the remaining subsections accordingly. The new subsection (b) would allow the Land Commissioner to conduct competitive prospect permit sales, similar to lease sales, that will provide the greatest income to the Permanent School Fund (PSF) when there is known competition for the resource. The GLO proposes to amend relettered subsection (c)(1)(B) to delete the provision requiring the lessee to provide evidence of payment of payment franchise taxes. The GLO proposes to amend the relettered subsection (c)(4) to make a conforming change and to raise the fee for the first year rental payment on a prospect permit from \$.50 per acre to not less than \$1.00 per acre. The GLO proposes to amend the relettered subsection (c)(6) to allow the GLO flexibility in the order in which a Mining Lease under §10.3(b)(1) is issued. The GLO proposes to amend the relettered subsection (c)(7) to allow the GLO the option of rejecting a prospect application for a tract of land encumbered by a previously received application or by a valid prospect permit. The GLO proposes to amend relettered subsection (c)(9) to allow the GLO to request any information the GLO needs to determine whether the issuance of a permit in the best interest of the PSF. The GLO proposes to amend the relettered subsection (d)(1) to allow the GLO not to issue a prospect permit if an immediate mining lease has already been issued under §10.2(d)(1) for the same tract of land. The GLO proposes to amend the relettered subsection (d)(2) to allow the GLO to issue a prospect permit for a period of less than one year and raises the fee for the annual rental payment on a prospect permit from \$.50 per acre to not less than \$1.00 per acre. The GLO proposes to amend the relettered subsection (e)(1) to allow the GLO to issue a renewal and extension of a prospect permit for a period of up to one year from the expiration date of the prospect permit. The GLO proposes to amend the relettered subsection (e)(2) to make a conforming change and to allow the GLO to consider, when deciding whether to renew and extend a prospect permit, whether to do so is in the best interest of the Permanent School Fund. The GLO proposes to amend the relettered subsection (f) to make a conforming change.

The GLO proposes amendments to §10.3, relating to Mining Leases on Properties Subject to Prospect. The GLO proposes to amend §10.3(b)(1) to allow the Land Commissioner to issue a mineral lease rather than a prospect permit if doing so is in the best interests of the Permanent School Fund. The GLO proposes to clarify subsection (b)(3)(D) and (E) that the required the tax ID number required in a lease application is the Texas Comptroller's tax ID number and to delete the provision requiring the lessee to provide evidence of payment of franchise taxes. The GLO proposes to amend subsection (b)(5) to make a conforming change. The GLO proposes to amend subsection (c)(5) to put the lessee on notice that a lease is not effective until a certified copy of the lease is received by the GLO and allow the Land

Commissioner to rescind a mineral lease granted to a lessee who has not provided the GLO with a certified copy of the filing within 90 days of the transmittal letter. This change makes recording requirements for hard mineral leases consistent with oil and gas leases. The GLO proposes to amend subsection (d)(1) to allow the GLO to issue a lease with a fixed-term if the commissioner determined that it is in the best interest of the PSF. The GLO proposes to amend subsection (d)(6) to clarify that surface damage payments are only required on tracts in which the state owns the surface.

The GLO proposes amendments to §10.4, relating to Exploration and Mining Leases for Minerals Subject to Sealed Bid. The GLO proposes to amend subsection (a) to reference §10.2(b) of this title (relating to Prospect Permits on State Lands) for other minerals that may be leased under §10.4. The GLO proposes to amend subsection (b) to reference §9.11 of this title (relating to Geophysical and Geochemical Exploration Permits). The GLO proposes to amend subsection (c)(1) to make a conforming change. The GLO proposes to amend subsection (c)(2) to clarify that failure to notify the surface owner of the issuance of a lease does not affect the validity of the lease. The GLO proposes to amend subsection (d)(3) to clarify that surface damage payments are only required on tracts in which the state owns the surface.

The GLO proposes amendments to §10.5, relating to Mining Leases on Relinquishment Act Lands. The GLO proposes to amend subsection (a)(1) and (2) to make conforming changes. The GLO proposes to amend subsection (b)(1)(B) to let an entity know that if they have stock ownership of 5% or more they may not receive a state lease or assignment of a state lease. The GLO proposes to amend subsection (d)(2) to require receipt of a certified copy of the lease within 90 days of execution. The GLO proposes to amend subsection (d)(4) to make a conforming change. The GLO proposes to delete the existing subsection (g) and replace it with a new language titled, Lease by owner of the soil, to allow the GLO to describe the procedures that the owner of the soil on Relinquishment Act Land must use to lease the land for mining purposes.

The GLO proposes amendments to §10.6, relating to Sulphur Unit Agreements. The GLO proposes to delete GLO in subsection (b)(1) and add the School Land Board.

The GLO proposes amendments to §10.7, relating to Conduct of Exploration and Mining Operations. The GLO proposes to amend subsection (a)(1), to make a conforming change. The GLO proposes to amend subsection (a)(2) to specify the date before which a plan of operation may not be required. The GLO proposes to amend subsection (a)(5), to make a conforming change. The GLO proposes to amend subsection (b)(5), to expand the definition of "Permit" to include an exploration permit issued by the Land Commissioner under §10.4 of this title (relating to Exploration and Mining Leases for Minerals Subject to Sealed Bid). The GLO proposes to amend subsection (b)(6), to expand the definition of "Permittee" to include the holder of an exploration permit. The GLO proposes to amend subsection (c)(2)(A), to make a conforming change. The GLO proposes to amend subsection (e)(1), to delete the requirement that the GLO acknowledge receipt of a proposed plan of operation. The GLO proposes to amend subsection (f)(4), to make a conforming change. The GLO proposes to amend subsection (f)(5), to require an operator to comply with all applicable federal and state laws regarding the disposal and treatment of hazardous materials and liquid wastes in addition to the other existing require-

ments. The GLO proposes to amend subsection (g)(1)(G) to include the term "excavation sites". The GLO proposes to amend subsection (h)(3) to allow the GLO to hold a reclamation bond until reclamation has been successfully completed.

The GLO proposes amendments to §10.8, relating to Assignments, Releases, Reports, Royalty Payments, Inspections, Forfeitures, and Reinstatements. The GLO proposes to amend subsection (a)(1), to prohibit assignment of a lease if it is prohibited by language in the lease or permit and eliminates the requirement that the Land Commissioner give written consent before liability of the transferee begins. The GLO proposes to amend subsection (a)(2), to make a conforming change. The GLO proposes to amend subsection (a)(4), to make a conforming change. The GLO proposes to amend subsection (b)(1), to require a log, sample analysis or other information from a test drill be filed with the GLO. The GLO proposes to amend subsection (b)(2) to give notice to the lessee that more than one royalty report may be required when multiple minerals are produced under the same lease. The new subsection (b)(3) would allow the GLO to require the installation and use of any reasonable method of measuring to insure proper measurement of the leased minerals.

The GLO proposes amendments to §10.9, relating to Mineral Awards and Patents. The GLO proposes to amend subsection (h)(2), to make a conforming change.

Larry Laine, Chief Clerk/Deputy Land Commissioner has determined the following:

FISCAL IMPACTS

For each year of the first five years the proposed amendments will be in effect, there will be minimal fiscal implications for state government as a result of enforcing or administering the amendments as proposed. There will be no fiscal implications for local governments.

PUBLIC BENEFIT/COST ANALYSIS

For each year of the first five years the proposed amendments will be in effect, the public benefit will be improved operation of the GLO and better conservation of state resources. The GLO does not anticipate incurring any additional costs as a result of administering the proposed rule amendments.

SMALL BUSINESS ANALYSIS

There may be some economic cost to small businesses, micro-businesses, and individuals based on the proposed amendments. The total costs for an individual, small business, or micro-business associated with compliance will vary depending on the different situations and choices made by each individual, small business, or micro-business. Further, the GLO does not have information on these businesses' gross receipts, sales revenues, or other costs. Therefore, the GLO is not able to determine the exact cost of compliance.

EMPLOYMENT IMPACT

There will not be any employment impact as a result of administering the proposed amendments.

REQUEST FOR COMMENTS BY THE PUBLIC

Comments on the proposed rulemaking may be submitted to Walter Talley, Texas Register Liaison, Texas General Land Office, P.O. Box 12873, Austin, Texas 78711-2873, facsimile number (512) 463-6311, or e-mail to walter.talley@glo.state.tx.us.

The GLO will accept comments on the proposed amendments for 30 days after publication in the *Texas Register*. The GLO encourages all interested persons to submit comments no later than the deadline. The GLO cannot guarantee that comments submitted after the deadline will be considered. For further information contact Walter Talley at (512) 475-1859.

STATUTORY AUTHORITY

Texas Natural Resources Code, §§31.051(3), 32.062(a), 32.205 and 33.064.

Cross reference to statute: Texas Natural Resources Code, §§31.051(3), 32.062(a), 32.205 and 33.064.

§10.1. Definitions; Exploration and Development Guide.

(a) Definitions. The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) - (4) (No change.)

(5) Mineral--Any naturally occurring inorganic or organic substance formed through geological processes having a definite chemical composition or a range of characteristic chemical compositions, and distinctive physical properties or molecular structure, or an aggregate thereof, that may be extracted from the earth with an expectation of profit. This includes, but is not limited to, base and precious metals; industrial minerals, such as gypsum, sulphur, talc, etc.; coal and lignite; construction materials such as granite, limestone, rhyolite and other rock that may be quarried for dimension stone or crushed for aggregate; or sand, gravel, caliche, clay and borrow material.

(6) [~~5~~] Person--Any individual, partnership, corporation, association, or other legal entity.

(7) [~~6~~] PSF--The Permanent School Fund.

(8) [~~7~~] PUF--The Public University Fund.

(9) [~~8~~] Relinquishment Act lands--Any public free school or asylum lands, whether surveyed or unsurveyed, sold with a mineral classification or reservation between September 1, 1895, and August 21, 1931. For the purposes of this chapter and for convenience, the term "Relinquishment Act lands" shall encompass any other lands, including vacancy lands, patented with all minerals reserved to the state and expressly made subject to the leasing terms and procedures governing Relinquishment Act lands.

(10) [~~9~~] Relinquishment Act leases--Leases issued under the Texas Natural Resources Code, Chapter 53, Subchapter C, and §10.5 of this title (relating to Mining Leases on Relinquishment Act Lands).

(11) [~~10~~] RRC--The Texas Railroad Commission.

(12) [~~11~~] SLB--The School Land Board.

(13) [~~12~~] Surface mining--The mining of minerals by removing the overburden, if any, lying above the natural deposit of minerals and mining directly from the natural deposits that are exposed. The term does not include in situ mining activities.

(14) [~~13~~] TDC--The Texas Department of Corrections.

(15) [~~14~~] TPWD--The Texas Parks and Wildlife Department.

(b) Exploration and development guide. For exploration and development for oil and gas, see Chapter 9 of this title (relating to Exploration and Leasing of State Oil and Gas [~~Development~~]). Minerals, other than oil and gas, underlying state lands are explored and leased

in the following ways, depending upon the type of mineral and the type of land.

(1) PSF lands, upland.

(A) (No change.)

(B) All other minerals, ~~[and shell, sand, and gravel]~~ explored and mined under prospect permits and leases issued by the GLO. See the Texas Natural Resources Code, Chapter 53, Subchapter B; §10.2 of this title (relating to Prospect Permits on State Lands) and §10.3 of this title (relating to Mining Leases on Properties Subject to Prospect).

(2) - (7) (No change.)

§10.2. Prospect Permits on State Lands.

(a) (No change.)

(b) If the commissioner determines that a certain mineral is present on a state tract subject to prospect, and that it is in the best interest of the PSF to issue a prospect permit to the highest and best bidder pursuant to a competitive bidding process, the commissioner shall offer the tract for prospect in accordance with §10.4(c), (d) and (e) of this title pertaining to the procedure for competitive lease sales.

(c) ~~[(b)]~~ Application requirements and procedures.

(1) Any person, firm, or corporation desiring to apply for a prospect permit shall make written application upon the form prescribed by the commissioner and furnished by the GLO. The application to prospect shall include:

(A) a description of the tract of land which identifies it by the section number, part of section or survey to be prospected, township number, and/or certificate number, if applicable, survey name, block number, number of acres to be prospected, and county or counties in which the land lies and, if land trade lands, the name and address of surface owner of record in the tax assessor's office; and

(B) the name, address, phone number, and taxpayer ID number of the applicant. If the applicant is a corporation, the corporate name, address, phone number, Texas Comptroller's taxpayer ID number, and the name of the officer authorized to execute applications for permits and leases~~], and written evidence confirming that it is not delinquent in paying its franchise taxes].~~

(2) The application to prospect shall be for an area not in excess of 640 acres with a 10% tolerance for tracts, sections, and surveys that contain more than 640 acres.

(3) The application to prospect may be for a part of a section if the part is described by field notes of record in the GLO or if the part can accurately be described as a part of the section such as the NE/4.

(4) The application to prospect shall be accompanied by the filing fee prescribed by §3.31 ~~[\$1.3]~~ of this title (relating to Fees) and, except as otherwise provided in §10.5(g)(7) of this title (relating to Mining Leases on Relinquishment Act Lands) the first year's rental payment of not less than \$1.00 ~~[\$.50]~~ per acre.

(5) Within 10 days of receipt of an application for permit on lands whose surface is owned or leased by TPWD or is subject to a conservation easement in favor of TPWD, the GLO shall notify the executive director of the TPWD that an application for permit has been received.

(6) Permits or immediate lease applications ~~[leases]~~ issued under §10.3(b)(1) of this title (relating to Mining Leases on Properties Subject to Prospect) will be considered ~~[issued]~~ on the basis of the order in which applications to prospect are received unless the commissioner

determines that it is in the best interest of the PSF to do otherwise. An application will be determined to be received on the date and time receipt is acknowledged by the ~~[mailroom]~~ staff of the GLO.

(7) If an application to prospect is received for a tract of land encumbered by a previously received application or by a valid prospect permit, the application may ~~[will]~~ be rejected. If so, ~~[and]~~ the applicant will be notified and all monies tendered will be refunded.

(8) An applicant may request that the application to prospect be withdrawn. If the request is received prior to processing of the prospect permit, all monies tendered will be refunded.

(9) An applicant may be requested to supplement the application with information in order that the land office may determine whether issuance of the permit will be in the best interest of the PSF ~~[prospecting will be conducted in good faith and in an orderly and environmentally responsible manner].~~

(d) ~~[(e)]~~ Prospect permit issuance and requirements.

(1) After the application requirements have been satisfied, a prospect permit, if granted, will be issued on a form prescribed and furnished by the GLO, unless an immediate lease is approved (See §10.3(b)(1) of this title), in which case no permit will be issued.

(2) The prospect permit will be for a term of up to one year from the date of application and, ~~[except as otherwise provided in §10.5(g)(7) of this title (relating to Mining Leases on Relinquishment Act Lands);]~~ will require an advance annual rental payment of not less than \$1.00 ~~[\$.50]~~ per acre.

(3) On the same day a permit is issued under this section on land whose surface is owned or leased by TPWD or is subject to a conservation easement in favor of TPWD, the GLO will notify TPWD of the issuance of the permit. The permit issued on such land will state that the surface of such land is owned or leased by TPWD or is subject to a conservation easement in favor of TPWD. Such permit will also state the name of the TPWD park or area manager responsible for the surface of such land.

(4) On land trade lands, the GLO will notify the surface owner that a permit has been issued if the surface owner requests such notice in writing by furnishing the GLO with a current mailing address and a legal description of each tract on which he desires such notice. Notice will also be sent to the surface owner at the address supplied on the application form. Failure to receive notice will not affect the validity of a permit issued under this section.

(e) ~~[(f)]~~ Prospect permit renewal.

(1) Permittee may request a renewal of a permit by tendering the appropriate rental payment and filing fee before the expiration date of the current permit. Prospect permit renewals, if granted, will be issued on a form prescribed and furnished by the GLO and shall extend the term of the permit for up to one year from the expiration date.

(2) Subject to the discretion of the commissioner, a prospect permit may be renewed up to and including four times, allowing the holder to retain the permit for five consecutive periods ~~[years]~~ from the date of issuance of the original prospect permit. At the time a permittee requests renewal of a permit, a determination of whether the permittee has exhibited good faith in prospecting, ~~[prospecting and]~~ whether the permittee has complied with all GLO rules and regulations and whether issuance of the permit is in the best interest of the PSF will be considered in the decision to grant or deny a renewal.

(3) If the holder of a prospect permit allows the permit to expire without filing for renewal, a new application must be submit-

ted. Priority of competing applications are governed by subsection ~~(c)(4)~~(7) of this section.

~~(f)~~ ~~[(e)]~~ Assignments and releases. Prospect permits may be assigned or released in accordance with §10.8 of this title (relating to Assignments, Releases, Reports, Royalty Payments, Inspections, Forfeitures, and Reinstatements). The assignment or release must be filed with GLO and must be accompanied by the filing fee prescribed by §3.31 ~~[\$1.3]~~ of this title (relating to Fees).

~~(g)~~ ~~[(f)]~~ Reports and inspections.

(1) Permittee must comply with all requirements of §10.7 of this title (relating to Conduct of Exploration and Mining Operations) and §10.8 of this title (relating to Assignments, Releases, Reports, Royalty Payments, Inspections, Forfeitures, and Reinstatements).

(2) All prospecting operations shall be subject at any time to inspection by the commissioner or an authorized representative. Information or data pertaining to prospecting operations shall be furnished to the commissioner or an authorized representative upon request.

§10.3. Mining Leases on Properties Subject to Prospect.

(a) (No change.)

(b) Lease application requirements and procedures.

(1) In an application for prospect permit on a state tract, an applicant may indicate that a specific mineral is located on the state tract and request an immediate issuance of a lease on that tract. A lease may be issued to the applicant in lieu of a prospect permit if the commissioner of the GLO determines that such a mineral is located on the state tract and that issuance of a lease to the applicant of is in the best interest of the PSF ~~[if applicant's application for prospect permit was received first under §10.2(b)(7) of this title (relating to Prospect Permits on State Fee Lands)].~~

(2) (No change.)

(3) Application to lease shall include:

(A) - (C) (No change.)

(D) the name, address, phone number, and Texas Comptroller's taxpayer ID number of a non-corporate applicant;

(E) the corporate name, phone number, Texas Comptroller's taxpayer ID number, address, the name of the officer authorized to execute permits and leases~~;~~ ~~and written evidence confirming that a corporate applicant is not delinquent in paying its franchise taxes;~~

(F) - (H) (No change.)

(4) (No change.)

(5) The application to lease shall be accompanied by a filing fee prescribed by §3.31 ~~[\$1.3]~~ of this title (relating to Fees) and the proposed lease payment which shall not be less than \$2.00 per acre.

(6) - (8) (No change.)

(c) Issuance of mining lease.

(1) - (4) (No change.)

(5) Leases shall be recorded in each county in which the state's property is located. After being recorded ~~[recording]~~, lessee shall obtain a certified copy of the recorded lease from the county clerk. Lessee shall send such certified copies to the GLO within 90 days of the date of the transmittal letter. The lease is not effective until a certified copy of the lease is received by the GLO. After the 90-day period has elapsed, the approval of the lease is rescinded unless the applicant

requests, and the commissioner approves in writing, an extension of time to send the required certified copies ~~[recording]~~.

(d) Minimum terms and conditions.

(1) The primary term of a mining lease may be for up to a maximum ~~[of a primary term]~~ of 20 years and as long thereafter as the leased minerals are produced in paying quantities. A ~~[The]~~ mining lease may be issued for a fixed term not to exceed 20 years, if the commissioner determines a fixed term lease is in the best interest of the PSF.

(2) - (5) (No change.)

(6) Upland leases on tracts in which the PSF owns the surface must include a provision requiring the payment of damages for the use of the surface in prospecting for, exploring, developing, or producing the leased minerals. The amount of damages for use of the surface will be determined through negotiations with GLO staff, approved by the commissioner, and incorporated in each lease form.

(7) (No change.)

(e) (No change.)

§10.4. Exploration and Mining Leases for Minerals Subject to Sealed Bid.

(a) Lands and minerals subject to lease. Generally, coal, lignite, sulphur, salt, and potash on PSF lands and all minerals on state agency lands are subject to lease by sealed bid. See §10.1 of this title (relating to Definitions; Exploration and Development Guide) for lands and minerals which are subject to lease under these sealed bid procedures and §10.2(b) of this title for other minerals that may be leased under this section.

(b) Exploration for certain minerals. Exploration for coal, lignite, sulphur, salt, and potash on PSF lands may be conducted under geophysical and geochemical permits issued by the GLO. Applications must be submitted on forms prescribed by the GLO. (See §9.11 of this title)

(c) Nomination, advertising, and award of tracts.

(1) Nominations, setting of terms and conditions, evaluation of sealed bids, advertising, and awards are administered by the SLB under Chapter 9 ~~[\$§153.1-153.3]~~ of this title (relating to Exploration and Leasing of State Oil and Gas ~~[Oil, Gas, and Mineral Land Sales]~~).

(2) On land trade lands, the GLO will notify the surface owner that a lease has been issued if the surface owner requests such notice in writing by furnishing the GLO with a current mailing address and a legal description of each tract on which he desires such notice. Failure of the surface owner to receive notice will not affect the validity of a lease issued under this section.

(3) (No change.)

(d) Minimum terms and conditions.

(1) - (2) (No change.)

(3) Upland leases issued under this section on tracts in which the PSF owns the surface must include a provision requiring the payment of damages for the use of the surface in prospecting for, exploring, developing, or producing the leased minerals. The amount of damages for use of the surface will be determined by negotiation with GLO staff, approved by the commissioner, and incorporated in each lease form.

(4) - (5) (No change.)

(e) (No change.)

§10.5. Mining Leases on Relinquishment Act Lands.

(a) Lands and minerals subject to lease.

(1) Any survey or portion of a survey of the Relinquishment Act land, as this term is uniquely defined in §10.1(a)(9) [§10.1(a)(7)] of this title (relating to Definitions; Exploration and Development Guide), is subject to lease under this section.

(2) All minerals, as defined in §10.1(a)(5) of this title, are subject to lease by the surface owner as agent for the state. ~~For purposes of this section, minerals include all substances commonly classified as minerals even though they may be extracted by methods which destroy the surface.~~ Minerals other than oil and gas may be leased together or separately. Oil and gas must be leased under the terms of Chapter 9 of this title (relating to Exploration and Leasing of State Oil and Gas [Development]).

(b) Authority and duties of agent.

(1) Prohibition against self-dealing. A surface owner may not lease to himself, herself, or itself, either directly or indirectly. A surface owner may not acquire by assignment a lease executed by the surface owner. A surface owner will be considered to have engaged in self-dealing if the surface owner leases to the following persons or entities or if the lease executed by the surface owner is assigned to the following persons or entities:

(A) (No change.)

(B) any corporation or subsidiary in which the surface owner is a principal stockholder, 5% or more, or an employee of such a corporation or subsidiary;

(C) - (F) (No change.)

(2) - (4) (No change.)

(c) (No change.)

(d) Approval and filing of lease.

(1) (No change.)

(2) Upon rejection of a proposed lease by the commissioner, the prospective lessee will be given written notice, which will specify the reasons for the rejection and any changes, deletions, or additions which would render the lease acceptable. The prospective lessee may request a hearing upon [reconsideration or appeal] a rejection of a lease under the hearings procedures set out in Chapter 2 [Chapter 4] of this title (relating to [General] Rules of Practice and Procedure).

(3) (No change.)

(4) The state's share of the approved bonus payment and the filing fee prescribed by §3.31 [§1.3] of this title (relating to Fees) shall be submitted along with the certified copy of the lease within 90 days of execution of the lease. Any lease is void unless it recites the actual consideration paid or promised for the lease.

(5) (No change.)

(e) - (f) (No change.)

(g) Lease by owner of the soil.

(1) An owner of the soil of lands covered by this chapter may lease those lands for the purpose of exploring for and producing minerals other than oil and gas in the manner provided by this section.

(2) An owner of the soil may apply in writing to the board for a lease of a mineral or minerals other than oil and gas.

(3) The application shall contain the following:

(A) the name and address of the applicant;

(B) a complete legal description of the land the applicant seeks to lease;

(C) the name and address of every owner of the soil of the land the applicant seeks to lease, if the applicant is not the sole owner of the soil;

(D) a brief letter opinion signed by an attorney licensed in this state setting out the surface ownership of the land sought to be leased;

(E) a statement of the applicant's experience in the exploration for and production of minerals other than oil and gas, including, without limitation, a list of any State of Texas or federal mineral leases currently or previously held or operated by the applicant or other entity in which the applicant has or had a significant interest during the five-year period preceding the date of the application;

(F) a statement that the applicant intends to explore for and, if commercially reasonable, produce minerals other than oil and gas or if the applicant plans that other person or firm shall conduct exploration and production:

(i) the name and address of the person or firm;

(ii) a description of such person's or firm's experience in the exploration for and production of minerals other than oil and gas, including, without limitation, a list of any State of Texas or federal minerals other than oil and gas leases currently or previously held or operated by the person or firm during the five-year period preceding the date of the application; and

(iii) a description of the applicant's intended degree and type of participation in the exploration of and production of the property and all consideration or benefits the applicant expects to receive in connection with the exploration of and production from the property; and

(G) the amount of bonus, rental, royalty, and other lease terms that the applicant proposes to pay or offer or pay and offer for the lease.

(4) The applicant shall provide geological, geophysical, geochemical, and other data or copies of the data, including interpretative data, pertinent to exploration for minerals other than oil and gas on the lands for which the application is made, in the applicant's possession or to which the applicant has reasonable access and which the applicant has the ability to provide to the land office. All such data shall be confidential and not subject to the provisions of the open records law, Chapter 552, Government Code, until one year after the expiration, termination, or forfeiture of a lease granted pursuant to this section. After one year after the expiration, termination, or forfeiture of such a lease, the data shall remain confidential to the extent permitted by Chapter 552, Government Code. If a lease is not issued, the data shall be returned to the applicant. Upon expiration, termination, or forfeiture of a lease or permit, the agency rights of the surface owner shall be ipso facto reinstated.

(5) The board may prescribe the form of the application, require additional information as it considers appropriate, and, by rule, otherwise provide for the implementation of this section.

(6) The staff of the land office shall review the information presented in the application, such other geological, geophysical, and geochemical data reasonably available to it relevant to the land proposed to be leased, and leasing information reasonably available to it relevant to the land proposed to be leased. The staff shall prepare a report to the board that contains:

(A) a summary of bonus, rental, royalty, and other lease terms then being offered and asked for leases of similar lands in the area of the land proposed to be leased; and

(B) data considered by the staff to be relevant, including, but not limited to, data concerning the land proposed to be leased and its estimated value for minerals other than oil and gas, recommended lease terms, and the applicant, including the applicant's history of leasing State of Texas or federal lands for minerals other than oil and gas.

(7) The board shall consider the application at a regular meeting. It may, in its sole discretion, grant or delay or deny the application or grant the application subject to specified conditions. Such conditions may include a requirement that if the applicant does not materially participate in the exploration or development of the leased premises, through labor performed, cash or goods contributed, or supplying other enhancement in value, the applicant must share equally with the permanent school fund any benefit derived from the lease.

(8) After the board has approved an application, the commissioner shall issue a lease to the applicant. The lease shall conform, as nearly as is practicable, to the form of lease prescribed by the commissioner under this chapter.

(9) The commissioner may not deliver a lease issued under this section until the applicant has executed and delivered to the commissioner a waiver of the applicant's right and duty to act as agent for the state in leasing the leased premises and to receive any part of the bonus, rental, royalty, and other consideration accruing to the owner of the soil under this chapter. The waiver and the lease shall be effective as of the date the commissioner executes the lease.

(10) Upon the expiration, termination, or forfeiture of a lease issued under this section, the agency rights and duties of the applicant as owner of the soil are reinstated without the necessity for further action by the owner of the soil, the board, or the commissioner.

(11) If an applicant is not the sole owner of the soil, the applicant may secure leases from the other owners of the soil from which the applicant is not prohibited from leasing under §53.074, Texas Natural Resources Code. If the applicant must obtain a lease from an owner of the soil from whom the applicant would otherwise not be permitted to lease in order reasonably to explore for or produce or explore for and produce minerals other than oil or gas, the commissioner may approve the lease on the condition that the applicant shall not receive any benefit from the lease, and, if the applicant should acquire by any method, including devise or inheritance, the right to receive any rental, royalty, or other benefit accruing to the owner of the soil's interest under the lease, the applicant shall assign the benefit to the commissioner for the benefit of the permanent school fund.

(12) The commissioner shall not approve any lease obtained by an applicant from another owner of the soil if the lease contains terms that are substantially inconsistent with or provide for a lesser bonus, rental, or royalty than the lease approved by the board. If the bonus, rental, or royalty in a lease obtained by an applicant from another owner of the soil for a comparable interest is greater than that approved by the board, then the lease approved by the board shall be amended to provide for the greater bonus, rental, or royalty, and the applicant shall be liable for all greater sums due. In determining whether an interest is comparable, the board shall consider the quantum of the interest, the time at which the lease was taken, and any other aspects of the lease transaction that the board considers to be relevant.

~~{(g) Waiver of agency rights.}~~

~~{(4) The surface owner may waive the surface owner's right to act as the state's agent for leasing all the state's minerals~~

except oil and gas. Such a waiver must cover all the state's minerals except oil and gas and must be on the GLO waiver form. The waiver must be filed for record in each county where any portion of the land is situated. Before such waiver can be effective, a certified copy of each recorded waiver must be filed in the GLO along with a title opinion showing that he is a surface owner of the relevant land.}

~~{(2) If agency rights are waived under this subsection, the minerals will be subject to prospect permit and lease under §10.2 of this title (relating to Prospect Permits on State Lands) and §10.3 of this title (relating to Mining Leases on Properties Subject to Prospect).}~~

~~{(3) A surface owner who waives agency rights under this subsection, or an assignee, heir, or anyone else succeeding to all or part of the surface owner's interest in the tract will not be the state's agent and will not receive compensation under a prospect permit or lease for as long as a prospect permit or lease issued under §10.2 of this title (relating to Prospect Permits on State Lands) or §10.3 of this title (relating to Mining Leases on Properties Subject to Prospect) remains in effect.}~~

~~{(4) Upon expiration, termination, or forfeiture of a lease or permit, the agency rights of the surface owner shall be ipso facto reinstated.}~~

~~{(5) If the surface owner conveys the surface owner's interest in the tract after waiving agency rights, but before any prospect permit or lease has been issued, the succeeding surface owner will be entitled to act as the state's agent for leasing the state's minerals.}~~

~~{(6) A waiver executed under this subsection may be revoked if there is no prospect permit or lease in effect at the time the waiver is revoked and if, while the waiver was in effect, the surface owner did not act in a manner that compromises the surface owner's ability to resume all duties and responsibilities as the state's agent. Such revocation must be in writing and filed for record in each county in which any portion of the land is located. A certified copy of the recorded revocation instrument must be filed in the GLO before it is effective.}~~

~~{(7) The fee for a prospect permit issued under this subsection will be set by the commissioner. This fee will be based on the fair market value of the bonus and annual rental customarily paid for leasing similar minerals in the area, prorated for the one-year term of the permit. The terms of a lease subsequently issued under this subsection will be negotiated. These terms will be based on the results of exploration activities and other appropriate data.}~~

~~{(8) In exceptional circumstances the commissioner may allow the waiver of agency rights under this subsection as to less than all the state's minerals except oil and gas. For the commissioner to allow a more limited waiver of agency rights, a showing that such a limited waiver is in the best interests of the state will be required.}~~

(h) - (i) (No change.)

§10.6. Sulphur Unit Agreements.

(a) (No change.)

(b) Approval of unit agreement.

(1) Any sulphur unit agreement which proposes to commit royalty interests in PSF lands or state agency lands shall be submitted to the SLB [GLO] pooling committee for examination, investigation, and presentation to the SLB or the appropriate board for lease.

(2) - (4) (No change.)

(c) - (d) (No change.)

§10.7. Conduct of Exploration and Mining Operations.

(a) Purpose and scope.

(1) It is the intent of this section to set minimum standards of conduct for lessees or permittees on state properties leased or permitted under this chapter. These minimum standards cover several types of state property, many different minerals, a wide range of mining techniques, dramatically different kinds of terrain and many different locations of varying value throughout the state. To provide the flexibility to accommodate these differences:

(A) - (C) (No change.)

(2) This section shall not apply to leases executed prior to March 22, 1989, [the date of acceptance of these rules] unless the lease specifically requires a plan of operations. Holders of active permits shall be required to comply with the provisions of this section regardless of the date of issue.

(3) - (4) (No change.)

(5) If any provision of this section conflicts with state or federal statutes, regulations, or rules of the RRC, Texas Commission on Environmental Quality, [Texas Water Commission,] Environmental Protection Agency, or Texas Water Development Board, [Air Control Board,] then such other statutes, regulations, or rules shall control.

(b) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) - (4) (No change.)

(5) Permit--A prospect permit issued by the commissioner under §10.2 of this title (relating to Prospect Permits on State ~~[Fee]~~ Lands) or an exploration permit issued by the commissioner under §10.4 of this title (relating to Exploration and Mining Leases for Minerals Subject to Sealed Bid).

(6) Permittee--The initial holder of a valid prospect or exploration permit or a successor, assignee, devisee, or heir who acquires any right of a permittee.

(7) - (9) (No change.)

(c) Overview of exploration and mining procedures.

(1) (No change.)

(2) Operations.

(A) Before an operator may commence operations on any premises, the permittee or lessee of those premises must submit an initial plan of operations to the GLO. Information required to be included in an initial plan will be controlled by the type of state property involved. If operations extend over several state properties, the permittee or lessee may submit one unified plan of operations. No operations may commence until such a plan of operations has been filed with the GLO in accordance with subsection (d) of this section and approved by the GLO in accordance with subsection (e) of this section.

(B) - (D) (No change.)

(d) (No change.)

(e) Requirements for approval of plan of operations.

(1) The proposed plan of operation shall be submitted to the GLO~~[, which shall promptly acknowledge its receipt to the permittee or lessee]~~. GLO staff will analyze the proposal and, if necessary, inspect the premises. In order to evaluate the plan, the GLO staff may require additional information from the lessee or permittee. Within 90 days after the GLO receives both a plan and any requested additional information, the GLO shall:

(A) - (B) (No change.)

(2) - (7) (No change.)

(f) Minimum standards of conduct on state premises.

(1) - (3) (No change.)

(4) Operator shall comply with applicable federal and state water quality standards and wastewater [waste water] discharge permit requirements and federal permitting requirements applicable to disturbance of wetlands, watercourses ~~[water courses]~~, and flood plains. Operator shall in its construction activities, to the greatest extent possible, avoid disturbance within natural watercourses and their immediate flood plains. Operator shall use only so much of underground water as may be reasonably necessary. If water-bearing strata or underground aquifers are encountered during drilling activities, shaft construction, or subsurface excavation, measures shall be taken by the operator to prevent pollution of such underground water sources. Operator shall comply with all applicable Texas Commission on Environmental Quality [Texas Water Commission] and RRC rules for the protection of usable quality water within the premises.

(5) Operator shall comply with applicable federal and state standards for the disposal and treatment of all hazardous materials and all solid and liquid wastes. All garbage, refuse, or trash shall either be removed from premises or disposed of, or treated so as to minimize, so far as practicable, its impact on the environment and surface resources. All waste rock, deleterious materials or substances and other waste produced by operations shall be deployed, arranged, disposed of, or treated in accordance with federal and state requirements and so as to minimize adverse impact upon the environment and surface resources.

(6) - (11) (No change.)

(g) Minimum standards of conduct on TPWD lands.

(1) Operators on premises whose surface is owned, or leased by TPWD or is subject to a conservation easement in favor of TPWD are also subject to the additional regulations found in this subsection.

(A) - (F) (No change.)

(G) If a diversion between all drilling or excavation sites, pads, and all upslope areas is required in an approved plan of operations, the diversion shall be constructed with a flared outlet stabilized by rock or other grade stabilization structures as necessary to prevent erosion. Drilling sites should be sloped with a minimum grade 0.3-0.5% to drain into such diversions so the run-off does not flow over the fill area. Sediment shall be cleaned out of diversion and properly disposed of periodically. A temporary straw bale barrier containing no noxious weed shall be constructed along the base of the drill site where it follows a natural water course. A temporary bale barrier shall be established immediately after the drill site is constructed to prevent erosion while side slopes are being stabilized. The bale barrier must be maintained, sediment removed and bales replaced. Sedimentation on areas adjacent to the drill or excavation site shall be minimized. Topsoil to a maximum depth not to exceed 18 inches shall be stockpiled on the upslope edge of each drill or excavation site ~~[pad]~~ and separated from upslope run-off by a diversion, or with other erosion control as necessary.

(H) - (M) (No change.)

(2) - (4) (No change.)

(h) Completion of operations and abandonment of premises.

(1) - (2) (No change.)

(3) The GLO will inspect the premises to verify that the reclamation required in the plan of operations has been completed. If a performance bond guaranteeing reclamation has been required in the plan of operations, it will be returned upon successful completion of reclamation activities.

§10.8. Assignments, Releases, Reports, Royalty Payments, Inspections, Forfeitures, and Reinstatements.

(a) Assignments and releases.

(1) A lease or permit issued under this chapter may be assigned at any time, unless otherwise stated in the lease or permit, in the manner provided for by TNRC §52.026. The liability of the transferor to properly discharge its obligations under the lease shall pass to the transferee ~~[upon prior written consent of the commissioner]~~. The commissioner may require the transferee to demonstrate that it has the financial responsibility to properly discharge its obligations under the lease, and may require the transferee to post a bond or provide other security to secure those obligations.

(2) After recordation, lessee or permittee shall obtain a certified copy from the county clerk of each recorded assignment covering the state lease or permit. Lessee or permittee shall send such certified copies to GLO within 90 days of the date of recordation, accompanied by the filing fee prescribed in §3.31 ~~[\$4.3]~~ of this title (relating to Fees).

(3) (No change.)

(4) The lessee or permittee may release the lease or permit back to the state at any time. To release a lease or permit, a lessee or permittee must record the release in each county where the state tract is located and mail a certified copy of each recorded release to GLO accompanied by the filing fee prescribed in §3.31 ~~[\$4.3]~~ of this title (relating to Fees).

(5) (No change.)

(b) Reports and payment of royalties.

(1) A log, sample analysis, or other information obtained from each test drilled on the area covered by the lease or permit shall be filed with the GLO ~~[upon request]~~. Lessee or permittee shall furnish annually on the anniversary date of the lease or permit a map or plat showing all activities on the state lease or permit. In addition, an evaluation map or plat shall be filed in the GLO within 90 days after any drilling program shall have been completed or abandoned, and the correctness of such map shall be sworn to by lessee or permittee or his representative. The map or plat shall show geologic formations penetrated, the depth, thickness, grade, and mineral character of all ore bodies, the water-bearing strata, the elevation and location of all test holes, and other pertinent information.

(2) Unless the lease provides otherwise, on or before the last day of the month after the month when production started, the lessee shall file a production and royalty report showing production and royalty for the calendar month when production started. Subsequently, a production and royalty report shall be filed before the last day of each month for production from the preceding calendar month. If more than one mineral is produced under the lease, the GLO may require a production and royalty report for each mineral. Such report shall be on a form prescribed and furnished by the GLO and shall show:

(A) - (C) (No change.)

(3) The commissioner may require the lessee to install and use any reasonable method of measuring the amount of minerals reported as mined or produced or sold from the leased premises.

(4) ~~[(3)]~~ Unless otherwise provided by the lease, royalty payments are to be received in the GLO on or before the last day of

the month following the month in which leased minerals are produced. However, for the purposes of this paragraph only, "produced" shall mean actually sold or used by lessee. Upon termination, forfeiture, or release of the lease, unpaid royalty for any stockpiled leased minerals shall be due and payable within one month of the effective date of said termination, forfeiture, or release.

(5) ~~[(4)]~~ Except when royalty is taken in-kind, and subject to subparagraphs (A) - (F) of this paragraph, relating to electronic funds transfer, lessees may pay royalties and other monies due by cash or check, money order, or sight draft made payable to the commissioner. Lessees may also pay by electronic funds transfer or in any manner that may be lawfully made to the state comptroller. Information regarding alternative payment methods may be obtained from the GLO Royalty Management Division. Payors are required to make payments by electronic funds transfer in compliance with 34 Texas Administrative Code Chapter 15 in the following circumstances:

(A) For leases executed or amended after May 11, 1989, but before September 1, 1991, payors that have made over \$500,000 in a category of payments, defined in subparagraph (D) of this paragraph, to the GLO during the preceding state fiscal year shall make payments of \$10,000 or more in the current fiscal year for those leases and in that category by electronic funds transfer.

(B) For leases executed or amended after August 30, 1991, but before June 9, 1995, payors that have made over \$250,000 in a category of payments, defined in subparagraph (D) of this paragraph, to the GLO during the preceding state fiscal year shall make payments of \$10,000 or more in the current fiscal year for those leases and in that category by electronic funds transfer.

(C) For leases executed or amended on or after June 9, 1995, payors that have made over \$25,000 in a category of payments, defined in subparagraph (D) of this paragraph, to the GLO during the preceding state fiscal year shall make all payments in the current fiscal year for those leases and in that category by electronic funds transfer.

(D) For purposes of subparagraphs (A) - (C) of this paragraph, each of the following is a separate category of payments:

(i) royalties (including shut-in and minimum royalties);

(ii) penalties and interest (A lease issued under TNRC Chapter 53, Subchapter C, shall be subject to penalties and interest as described in TNRC §52.131(e) - (j));

(iii) other payments to the state agency, excluding interest and extraordinary payments such as payments made in settlement of litigation.

(E) The GLO anticipates that those payors that have exceeded the threshold sums set out in subparagraphs (A) - (C) of this paragraph in the preceding state fiscal year will also exceed those sums in the current state fiscal year. The application of subparagraphs (A) - (C) of this paragraph to a specific payor may be waived at the commissioner's discretion to the extent allowed by law, upon a showing that a payor will not exceed the threshold sums set out in subparagraphs (A) - (C) of this paragraph in the current fiscal year, or for other good cause.

(F) The GLO will notify each payor to whom this paragraph applies in compliance with 34 Texas Administrative Code Chapter 15.

(c) - (e) (No change.)

§10.9. Mineral Awards and Patents.

(a) - (g) (No change.)

(h) Patenting a mineral award.

(1) (No change.)

(2) The owner of the mineral award shall make written request that the award be patented. The request shall be accompanied by three separate remittances: the balance of the purchase price, a patenting fee, and a recording fee. The appropriate patenting and recording fees are found in §3.31 [§4-3] of this title (relating to Fees).

(3) (No change.)

(i) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 31, 2009.

TRD-200903861

Trace Finley

Deputy Commissioner, Policy and Governmental Affairs

General Land Office

Earliest possible date of adoption: October 18, 2009

For further information, please call: (512) 475-1859



CHAPTER 13. LAND RESOURCES

SUBCHAPTER A. RULES, PRACTICE, AND PROCEDURE FOR LAND LEASES AND TRADES

31 TAC §13.1, §13.3

The Commissioner of the General Land Office (GLO) proposes amendments to §13.1, concerning Leases; and §13.3, concerning Grants and Credits. These rule amendments have been undertaken as a result of the passage of Senate Bill (SB) 654 during the 80th Texas Legislature, which amended portions of Chapter 51 of the Texas Natural Resource Code (TNRC). Amendments were also made to establish consistency with current practices and procedures and to avoid duplication with statutes and standard contract language.

SB 654 modifies Chapter 51 of the TNRC so that the Commissioner may determine the terms and conditions of GLO leases and easements that authorize the use of public lands for private purposes. Existing provisions that required specific terms and conditions or that limited the ability of the Commissioner to determine the terms and conditions that are in the best interest of the state are amended or eliminated.

FISCAL AND EMPLOYMENT IMPACTS

Rene Truan, Deputy of the Professional Services Division, has determined that for each year of the first five years that the amended sections as proposed will be in effect, there will be no significant fiscal implication to state or local government as a result of enforcing or administering these amended sections.

Mr. Truan has also determined that for each year of the first five years that the amended sections as proposed will be in effect, there will be no significant economic costs to the public.

Mr. Truan has also determined that for each year of the first five years that the proposed amended sections will be in effect, the anticipated impact on local employment will be insignificant.

PUBLIC BENEFIT

Mr. Truan has determined that the public will benefit because with the proposed amended sections the GLO will be able to administer its leasing program, including granting of credits for improvements, more efficiently and the public will benefit from the certainty and clarity in the revised processes. The public will also benefit from the reduction in the number and length of the rules in Chapter 13 and will be able to avoid duplicative requirements previously found between these rules, Chapter 51 of the TNRC and the GLO administrative procedures.

SMALL BUSINESS ANALYSIS

Mr. Truan has determined that the proposed amended sections will have no significant effect on small businesses during each year of the first five years these sections are in effect.

TAKINGS IMPACT ASSESSMENT

GLO has evaluated the proposed rulemaking in accordance with Texas Government Code, §2007.043(b), and §2.18 of the Attorney General's Private Real Property Rights Preservation Act Guidelines, to determine whether a detailed takings impact assessment is required. The GLO has determined that the proposed rulemaking does not affect private real property in a manner that requires real property owners to be compensated as provided by the Fifth and Fourteenth Amendments to the United States Constitution or Article I, Sections 17 and 19, of the Texas Constitution. Furthermore, the GLO has determined that the proposed rulemaking would not affect any private real property in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the rule amendments. The GLO has determined that the proposed rulemaking will not result in a taking of private property and that there are no adverse impacts on private real property interests inasmuch as the property subject to the proposed amendments is owned by the state.

CONSISTENCY WITH COASTAL MANAGEMENT PROGRAM

The proposed rulemaking is subject to the Coastal Management Program (CMP), 31 TAC §505.11(a)(1)(C) - (I) and (c), relating to the Actions and Rules Subject to the Coastal Management Program. The GLO has reviewed these proposed actions for consistency with the CMP's goals and policies in accordance with the regulations of the Coastal Coordination Council (Council). The applicable goals and policies are found at 31 TAC §501.12, relating to Goals; §501.17, relating to Policies for Construction, Operation, and Maintenance of Oil and Gas Exploration and Production Facilities; and §501.23, relating to Policies for Development in Critical Areas; and §501.24, relating to Policies for Construction of Waterfront Facilities and Other Structures on Submerged Lands. The proposed rulemaking allows the Commissioner to determine terms and conditions of GLO leases that authorize the use of public lands for private purposes, not the manner in which operations are conducted. Therefore, since requests for the use of coastal public land must continue to meet the same criteria for GLO approval, the GLO has determined that the proposed actions are consistent with applicable CMP goals and policies. The proposed amendments will be distributed to Council members in order to provide them an opportunity to provide comment on the consistency of the proposed amended rules during the comment period.

REQUEST FOR COMMENTS THE PUBLIC

To comment on the proposed rulemaking, please send a written comment to Walter Talley, Texas Register Liaison, Texas General Land Office, P.O. Box 12873, Austin, Texas

78711, facsimile number (512) 463-6311 or e-mail to walter.talley@glo.state.tx.us. Written comments must be received no later than 5:00 p.m., 30 days from the date of publication of this proposal.

STATUTORY AUTHORITY

The amendments are proposed in accordance with the authority of the Commissioner in §51.121 of the TNRC to set terms and conditions for leases and under the Commissioner's authority in §51.014 of the TNRC to establish rules that carry out the provisions of the chapter.

No other statutes, articles, or codes are affected by this proposal.

§13.1. Leases.

[(a)] Term.}]

[(1)] Unsold permanent free school and asylum land may be leased by the commissioner of the General Land Office for agricultural, grazing, and commercial purposes under terms and conditions set by the commissioner.}]

[(2)] Land that is escheated to the state may not be leased for anything other than grazing purposes for a period of over two years. Lessee shall pay rent due under any lease of escheated land in money; credits for improvements will not be granted.}]

[(3)] Any leased land is subject to trade or sale.}]

[(b)] Competitive bids. Competitive bids may be received by the commissioner. Anyone who notified the General Land Office, in writing, of a desire to lease a particular tract of land, will be furnished an application at least 30 days prior to the awarding of the lease. Each applicant will have 30 days from the date the application was forwarded in which to submit his bid.}]

[(c)] Application and delivery. Applications for lease must specify and describe the particular lands desired and the purpose for which the lease is intended, and must be submitted with the applicant's offer for the first year's rental and a filing fee. Applications shall be signed by the applicant and made a part of any lease awarded.}]

[(a)] [(d)] Lease fee. The appropriate filing fee will be determined by §1.3 of this title (relating to Fees), except for commercial leases. The General Land Office will charge commercial lease applicants a fee to offset the costs of evaluating the lease proposals. The fee shall be 1.5% of the fair market value of the property being leased, determined at the time the lease is executed. The commissioner may waive all or a part of this fee.

[(b)] [(e)] Awards. After study and investigation of the application for suitability of the purpose for the lease, surrounding ownership of the tract, access, water availability, improvements by any prior lessee, and management by any current lessee, the commissioner may award the lease to the highest responsible bidder.

[(f)] Delivery. The applicant will be notified that his application has been accepted, and a lease will be executed by the commissioner and forwarded to the county clerk of the county in which the land is located for recordation. Upon payment of the recording fee by the applicant, the county clerk will forward the original lease to the lessee.}]

[(g)] Expired leases. If a lease expires within 180 days of a sale date, the commissioner may withhold from lease the tracts involved.}]

[(h)] Forfeiture and lien. If a lessee fails to pay the annual rental due for any year within 60 days after such rental becomes due, the commissioner will forfeit the lease. The state will have a lien upon all private property owned by the lessee located upon the leased premises

to secure all payments due. This lien will be effective during the lease term, and will continue in effect after forfeiture of the lease.}]

[(i)] Improvements. The lessee may place or construct improvements on the lease. The lessee may bear the cost of an improvement or may apply to receive a grant or credit for an improvement on permanent free school land under §13.3 of this title (relating to Grants and Credits).}]

[(1)] Existing improvements and improvements made pursuant to a grant or credit are the property of the state and cannot be removed by the lessee at any time without the commissioner's written permission.}]

[(2)] Improvements, for which no grant or credit is extended, made by the lessee during the lease term are the property of the lessee. The lessee may remove the improvements or the lessee's personal property within a reasonable time after expiration of the lease, provided the lessee gives prior written notice to the commissioner and owes the state no rent or other sums or obligations. The commissioner may retain the improvements or any personal property on the land as an offset against such debts. If they are retained as an offset or not removed in a reasonable time, they become the property of the state. If the commissioner determines that any improvements cannot be removed without harming the land, they may not be removed until satisfactory provisions are made for mitigation or compensation for the damage caused by removal.}]

[(3)] Commercial improvements on land leased under subsection (a)(1) of this section shall not become the property of the state and shall be taxed in the same manner as other private property. All such improvements should be removed prior to the expiration of the lease term or any extensions or renewal periods. If the commercial improvements are not removed prior to the expiration and there has been no renewal or extension of the lease, then they shall become the property of the state.}]

(c) [(f)] Soil and water conservation plans. In the interest of sound land management practices, lessee may [will] be required to implement a soil and water conservation plan. The plan is to be developed between lessor, lessee, and may include the USDA, Natural Resources Conservation Service [Soil Conservation Service] and/or Soil and Water Conservation Districts, or other entities approved by the Lessor. Lessee shall comply with the following procedures adopted by the General Land Office for submission and approval of the plan.

(1) After entering into a surface lease with the General Land Office, lessee will prepare a natural resources [soil and water conservation] plan to meet the needs of the leased tract. The term of the plan shall coincide with the term of the contract. [cover a five-year period. Lessee may contact the Soil Conservation Service, the Association of Soil and Water Conservation Districts of Texas, or the Texas State Soil and Water Conservation Board for assistance.}] Failure to timely submit the soil and water conservation plan as outlined below will subject the lease to forfeiture.

(2) The preliminary plan should be submitted to the appropriate field office of the General Land Office, which shall then forward the plan to the General Land Office in Austin. The preliminary plan shall be submitted for approval within a reasonable amount of time, and in any event, no later than six months from the time lessee entered into the lease agreement. Submission of the plan to the appropriate field office shall constitute filing for the purposes of this paragraph.

(3) The General Land Office shall notify lessee in writing at the earliest possible time of approval or rejection.

[(4)] Only after receiving notice of approval shall lessee present the plan to the local soil and water conservation district.

Lessee will work in conjunction with the local district to carry out the provisions of the plan.}]

(4) [(5)] If the plan or any part thereof is not approved, lessee will be notified by letter stating the specific reasons. Lessee will be required to follow the same procedure and resubmit a modified plan to the appropriate field office. The modified plan shall be submitted within a reasonable period of time from notice of rejection, and in no event later than four weeks from the date of the notice. [Once approval has been granted, lessee shall proceed as directed in paragraph (4) of this subsection.]

(5) [(6)] Once a plan has been approved, lessee will be required to comply with the timetables and schedules set out in the plan document. [Failure to do so at any time during the lease term will subject the lease to forfeiture.]

(d) [(k)] Uses. Lessee shall use the leased premises for purposes stated in the lease only. Any other use of the leased premises is unauthorized and shall subject the lease to forfeiture at the discretion of the commissioner.

(e) [(H)] Fine for unlawful use. If a person without authority or right cuts or removes any mineral, guayule, or lechuguilla from land that belongs to the permanent school fund, a fine will be imposed against the person by the general office in an amount that is equal to the value of the substance that was cut or removed and will subject the lease to forfeiture at the option of the lessor.

[(m) Bid rejection. Any bid or offer may be rejected by the commissioner for good and sufficient cause before the lease is signed.]

[(n) Late payments. If the lessee does not deliver or mail to the land office any rental payment within 15 days after it is due, a penalty of 10% of the payment shall be assessed and added to the amount due.]

(f) [(o)] Refunds. Refunds may be issued in cases of mistake, overcharge, or for other good cause. If a lessee abandons or surrenders a lease, a refund will not be issued unless the commissioner agrees to rescind the lease.

§13.3. Grants and Credits.

(a) Permanent Improvements.

(1) On permanent school fund land leased or improvements for any [grazing or agricultural] purposes, the commissioner of the General Land Office may:

(A) grant money from a special account funded from surface damage fees to the lessee to make permanent improvements to the land or improvements; or

(B) allow the lessee credit against the rent for all or part of the cost of making permanent improvements to the land.

[(2) The amount of a grant under this subsection may not exceed the amount by which the improvement increases the value of the land, as determined by land office appraisers.]

(2) [(3)] Permanent improvements are in the nature of a fixture or an appurtenance to the land, and include conservation or reclamation projects [(see subsection (b)(2) of this section)]. With the exception of the latter, the improvement must become part of the realty rather than being something easily removed. Examples of fixtures include, among other things fences, gates, cattleguards, barns, windmills, water wells, and pipelines, tanks, embankments, terraces, etc. Examples that are not fixtures include deer blinds, trailers, feeders, moveable pumps, generators, and other equipment. Notwithstanding the above, Lessor may approve lease credits and interpret the category of the improvements on a case-by-case basis.

[(b) Conservation and Reclamation.]

[(1) The commissioner may grant or expend money from a special account funded from surface damage fees for conservation or reclamation projects on permanent school fund land.]

[(2) Conservation or reclamation projects are those designed to preserve or increase the quality of land or natural resources by affecting natural conditions. Examples of conservation or reclamation projects include among other things, terracing, erosion control, establishing perennial and other grasses, creation of wildlife habitats, and brush clearing. Examples that are not conservation or reclamation projects include: architectural landscaping, landfills, construction of buildings, fences, etc.]

[(3) A grant or credit will not be given for conservation or reclamation of land subject to damage by mineral exploration or development where the mineral lessee has the duty to conserve or reclaim the land.]

(b) [(e)] Application.

(1) A person desiring a grant or credit must submit a written request [application] to the commissioner. [(A person applying to lease the surface estate of permanent school fund land may apply for a grant or credit pending award of the lease.) The application shall include:]

[(A) a description of the land where the improvement or project will be located, including a map showing the proposed location of the improvement or project;]

[(B) a detailed description of the improvement or project;]

[(C) estimates made in cooperation with the General Land Office, of the following:]

[(i) how the improvement or project will benefit the land;]

[(ii) the amount in which the improvement or project will increase the value of the land;]

[(iii) the cost to construct the improvement or complete the project;]

[(iv) the length of time required to complete the improvement or project; and]

[(v) a sworn statement by the applicant as to whether he is receiving or has applied for any other credit, reimbursement, or grant for construction of improvements or for conservation or reclamation projects on the land.]

(2) In deciding whether to make a grant or allow a credit the commissioner may consider whether the grant or credit applied for is in the best interest of the permanent school fund.[:]

[(A) whether the improvement or project will enhance the quality, productivity, or manageability of the land to an extent justifying the amount of the grant or credit;]

[(B) whether the applicant has or should be required to implement or modify soil and water conservation, wildlife management, livestock management, or other plans on the land;]

[(C) whether the grant or credit applied for is in the best interest of the permanent school fund; and]

[(D) any other matter which the commissioner considers appropriate in determining the best interests of the permanent school fund.]

[(d) Terms.]

~~{(1) All grants and credits will be made on the following terms and conditions:}~~

~~{(A) Any improvement, structure, or other thing placed on the land pursuant to a grant or credit is the property of the permanent school fund.}~~

~~{(B) The recipient must properly maintain all improvements, structures, or other things placed on the land.}~~

~~{(C) No improvement, structures, or other thing placed on the land may be removed, altered or modified without the prior express written consent of the commissioner.}~~

~~{(D) The commissioner may also include whatever additional terms and conditions he considers appropriate or necessary.}~~

~~{(2) The terms of a grant or credit to a lessee shall become part of the original lease.}~~

~~{(3) If, at any time, the recipient fails to comply with this section or the terms of the grant or credit, the commissioner may revoke the grant or credit, forfeit the lease, or both. If the grant or credit is revoked, the recipient must repay any money granted or pay rent for which credit was given. In addition, the recipient is liable for any actual damages to the land or to the improvement.}~~

~~(c) [(e)] Copies and Inspection.~~

~~(1) Before the recipient may receive money or credit against the rent, the recipient must submit to the commissioner copies of all receipts, vouchers, invoices, cancelled checks, and other evidence of the costs of the improvement or project. Upon request, the recipient must also submit copies of documentation for other credit, reimbursement, or grants for improvements or projects on the land.~~

~~(2) Except as provided in subsection (d)[(f)](2) of this section, a grant may be made or credit given only after the conservation or reclamation plan or construction of the improvement is completed and a land office employee has made an inspection and certified to its satisfactory completion.~~

~~(d) [(f)] Payment.~~

~~(1) The amount disbursed or credited shall be the lesser of the recipient's actual authorized costs or the amount of the grant or credit previously set by the commissioner, provided that:~~

~~(A) no money may be disbursed or credit given for costs covered by other credit or money under this section or received from any other private or public agency, program, or source; and~~

~~(B) actual costs are limited to costs of material and services specifically required to construct an improvement or for a conservation and reclamation project, and no money may be disbursed or credit given for administrative costs, overhead, mileage, purchase of tools or equipment, or other incidental expenses.~~

~~(2) If construction of the improvement or completion of the plan takes more than one year, money may be disbursed or credit given in installments upon satisfactory completion of each stage of the plan or construction, if payment by this method is necessary and is justified by the increase in value, productivity, or manageability of the land.~~

~~(3) Annually, General Land Office staff will inspect and document the condition and maintenance of the improvements.~~

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 31, 2009.

TRD-200903862

Trace Finley

Deputy Commissioner, Policy and Governmental Affairs
General Land Office

Earliest possible date of adoption: October 18, 2009

For further information, please call: (512) 475-1859



SUBCHAPTER B. RIGHTS-OF-WAY OVER PUBLIC LANDS

31 TAC §13.11

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the General Land Office or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The Commissioner of the General Land Office (GLO) proposes the repeal of §13.11, concerning Application. This rule repeal has been undertaken as a result of the passage of Senate Bill (SB) 654 during the 80th Texas Legislature, which amended portions of Chapter 51 of the Texas Natural Resource Code (TNRC). Amendments were also made to establish consistency with current practices and procedures and to avoid duplication with statutes and standard contract language.

SB 654 modifies Chapter 51 of the TNRC so that the Commissioner may determine the terms and conditions of GLO leases and easements that authorize the use of public lands for private purposes. Existing provisions that required specific terms and conditions or that limited the ability of the Commissioner to determine the terms and conditions that are in the best interest of the state are amended or eliminated.

FISCAL AND EMPLOYMENT IMPACTS

Rene Truan, Deputy Commissioner for the GLO's Professional Services Program Area, has determined that for each year of the first five years the repeal as proposed are in effect there will be no additional cost to state government as a result of enforcing or administering the repeal. Administration of the proposed repeal of §13.11 will allow the Commissioner to determine the terms and conditions of GLO easements that authorize the use of public lands for private purposes so that they are in the best interest of the State and ultimately bring the most revenue for the Permanent School Fund.

Mr. Truan has determined that for each year of the first five years the repeal as proposed are in effect there will be no fiscal implications for local governments as a result of enforcing or administering the repeal of the section.

Mr. Truan has determined that the proposed repeal will have no adverse local employment impact that requires an impact statement pursuant to Texas Government Code, §2001.022.

Mr. Truan has also determined that for each year of the first five years that the repeal as proposed will be in effect, there will be no significant economic costs to the public.

PUBLIC BENEFIT

Mr. Truan has determined that the public will benefit because with the proposed repeal, the GLO will be able to administer its rights-of-way easement program more efficiently and the public will benefit from the certainty and clarity in the revised processes. The public will also benefit from the reduction in the number and

length of the rules in Chapter 13 and will be able to avoid duplicious requirements previously found between these rules, Chapter 51 of the TNRC and the GLO administrative procedures.

SMALL BUSINESS ANALYSIS

Mr. Truan has determined that the proposed repeal will have no significant effect on small businesses during each year of the first five years the section is repealed.

TAKINGS IMPACT ASSESSMENT

GLO has evaluated the proposed rulemaking in accordance with Texas Government Code, §2007.043(b), and §2.18 of the Attorney General's Private Real Property Rights Preservation Act Guidelines, to determine whether a detailed takings impact assessment is required. The GLO has determined that the proposed rulemaking does not affect private real property in a manner that requires real property owners to be compensated as provided by the Fifth and Fourteenth Amendments to the United States Constitution or Article I, Sections 17 and 19, of the Texas Constitution. Furthermore, the GLO has determined that the proposed rulemaking would not affect any private real property in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the rule amendments. The GLO has determined that the proposed rulemaking will not result in a taking of private property and that there are no adverse impacts on private real property interests inasmuch as the property subject to the proposed amendments is owned by the state.

CONSISTENCY WITH COASTAL MANAGEMENT PROGRAM

The proposed rulemaking is subject to the Coastal Management Program (CMP), 31 TAC §505.11(a)(1)(C) - (I) and (c), relating to the Actions and Rules Subject to the Coastal Management Program. The GLO has reviewed these proposed actions for consistency with the CMP's goals and policies in accordance with the regulations of the Coastal Coordination Council (Council). The applicable goals and policies are found at 31 TAC §501.12, relating to Goals; §501.17, relating to Policies for Construction, Operation, and Maintenance of Oil and Gas Exploration and Production Facilities; and §501.23, relating to Policies for Development in Critical Areas; and §501.24, relating to Policies for Construction of Waterfront Facilities and Other Structures on Submerged Lands. The proposed rulemaking allows the Commissioner to determine terms and conditions of GLO easements that authorize the use of public lands for private purposes, not the manner in which operations are conducted. Therefore, since requests for the use of coastal public land must continue to meet the same criteria for GLO approval, the GLO has determined that the proposed actions are consistent with applicable CMP goals and policies. The proposed amendments will be distributed to Council members in order to provide them an opportunity to provide comment on the consistency of the proposed new rules during the comment period.

REQUEST FOR COMMENTS THE PUBLIC

To comment on the proposed rulemaking, please send a written comment to Walter Talley, Texas Register Liaison, Texas General Land Office, P.O. Box 12873, Austin, Texas 78711, facsimile number (512) 463-6311 or e-mail to walter.talley@glo.state.tx.us. Written comments must be received no later than 5:00 p.m., 30 days from the date of publication of this proposal.

STATUTORY AUTHORITY

The repeal is proposed in accordance with the authority of the Commissioner in §51.121 of the TNRC to set terms and conditions for right-of-way easements and under the Commissioner's authority in §51.014 to establish rules that carry out the provisions of the chapter.

No other statutes, articles, or codes are affected by this proposal.

§13.11. Application.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 31, 2009.

TRD-200903864

Trace Finley

Deputy Commissioner, Policy and Governmental Affairs
General Land Office

Earliest possible date of adoption: October 18, 2009

For further information, please call: (512) 475-1859



31 TAC §§13.12, 13.13, 13.17, 13.19

The Commissioner of the General Land Office (GLO) proposes amendments to §13.12, concerning Nature of the Grant; §13.13, concerning Renewal, Assignment, Termination; §13.17, concerning Fees for Right-of-Way of Easement; and §13.19, concerning Protection of Certain State Land. These rule amendments have been undertaken as a result of the passage of Senate Bill (SB) 654 during the 80th Texas Legislature, which amended portions of Chapter 51 of the Texas Natural Resource Code (TNRC). Amendments were also made to establish consistency with current practices and procedures and to avoid duplication with statutes and standard contract language.

SB 654 modifies Chapter 51 of the TNRC so that the Commissioner may determine the terms and conditions of GLO leases and easements that authorize the use of public lands for private purposes. Existing provisions that required specific terms and conditions or that limited the ability of the Commissioner to determine the terms and conditions that are in the best interest of the state are amended or eliminated.

FISCAL AND EMPLOYMENT IMPACTS

Rene Truan, Deputy Commissioner for the GLO's Professional Services Program Area, has determined that for each year of the first five years the amended sections as proposed are in effect there will be no additional cost to state government as a result of enforcing or administering the amended sections. Administration of the proposed amendments to §§13.12, 13.13, 13.17 and 13.19 will allow the Commissioner to determine the terms and conditions of GLO easements that authorize the use of public lands for private purposes so that they are in the best interest of the State and ultimately bring the most revenue for the Permanent School Fund.

Mr. Truan has determined that for each year of the first five years the amended sections as proposed are in effect there will be no fiscal implications for local governments as a result of enforcing or administering the amended sections.

Mr. Truan has determined that the proposed rulemaking will have no adverse local employment impact that requires an impact statement pursuant to Texas Government Code, §2001.022.

Mr. Truan has also determined that for each year of the first five years that the amended sections as proposed will be in effect, there will be no significant economic costs to the public.

PUBLIC BENEFIT

Mr. Truan has determined that the public will benefit because with the proposed amended sections the GLO will be able to administer its rights-of-way easement program more efficiently and the public will benefit from the certainty and clarity in the revised processes. The public will also benefit from the reduction in the number and length of the rules in Chapter 13 and will be able to avoid duplicitous requirements previously found between these rules, Chapter 51 of the TNRC and the GLO administrative procedures.

SMALL BUSINESS ANALYSIS

Mr. Truan has determined that the proposed amended sections will have no significant effect on small businesses during each year of the first five years these sections are in effect.

TAKINGS IMPACT ASSESSMENT

GLO has evaluated the proposed rulemaking in accordance with Texas Government Code, §2007.043(b), and §2.18 of the Attorney General's Private Real Property Rights Preservation Act Guidelines, to determine whether a detailed takings impact assessment is required. The GLO has determined that the proposed rulemaking does not affect private real property in a manner that requires real property owners to be compensated as provided by the Fifth and Fourteenth Amendments to the United States Constitution or Article I, Sections 17 and 19, of the Texas Constitution. Furthermore, the GLO has determined that the proposed rulemaking would not affect any private real property in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the rule amendments. The GLO has determined that the proposed rulemaking will not result in a taking of private property and that there are no adverse impacts on private real property interests inasmuch as the property subject to the proposed amendments is owned by the state.

CONSISTENCY WITH COASTAL MANAGEMENT PROGRAM

The proposed rulemaking is subject to the Coastal Management Program (CMP), 31 TAC §505.11(a)(1)(C) - (I) and (c), relating to the Actions and Rules Subject to the Coastal Management Program. The GLO has reviewed these proposed actions for consistency with the CMP's goals and policies in accordance with the regulations of the Coastal Coordination Council (Council). The applicable goals and policies are found at 31 TAC §501.12, relating to Goals; §501.17, relating to Policies for Construction, Operation, and Maintenance of Oil and Gas Exploration and Production Facilities; and §501.23, relating to Policies for Development in Critical Areas; and §501.24, relating to Policies for Construction of Waterfront Facilities and Other Structures on Submerged Lands. The proposed rulemaking allows the Commissioner to determine terms and conditions of GLO easements that authorize the use of public lands for private purposes, not the manner in which operations are conducted. Therefore, since requests for the use of coastal public land must continue to meet the same criteria for GLO approval, the GLO has determined that the proposed actions are consistent with applicable CMP goals and policies. The proposed amendments will be distributed to Council members in order to provide them an opportunity to provide comment on the consistency of the proposed new rules during the comment period.

REQUEST FOR COMMENTS THE PUBLIC

To comment on the proposed rulemaking, please send a written comment to Walter Talley, Texas Register Liaison, Texas General Land Office, P.O. Box 12873, Austin, Texas 78711, facsimile number (512) 463-6311 or e-mail to walter.talley@glo.state.tx.us. Written comments must be received no later than 5:00 p.m., 30 days from the date of publication of this proposal.

STATUTORY AUTHORITY

The amendments are proposed in accordance with the authority of the commissioner in §51.121 of the TNRC to set terms and conditions for right-of-way easements and under the commissioner's authority in §51.014 to establish rules that carry out the provisions of the chapter.

No other statutes, articles, or codes are affected by this proposal.

§13.12. *Nature of Grant.*

(a) The commissioner may grant easements for any purpose, under any terms, and for any term that the commissioner deems to be in the best interest of the state.

(b) [(a)] An easement or lease, if granted by the commissioner, will be subject to the rules contained in this section and will bind the grantee to comply with the following provisions:

(1) To comply with all existing rules and with all existing and future rules or orders which the commissioner determines to be necessary and proper in order to provide for the protection and conservation of the natural resources of public lands and waters.

[(2) To indemnify the grantor against any and all liability for damages to life, person, or property arising from the grantee's occupation and use of the area covered by the interest granted.]

[(3) That the allowance of the easement or lease shall be subject to the express condition that the rights granted will not unduly prevent or interfere in any way with the management, administration of, or the granting, either prior or subsequent to the lease, of other rights by the commissioner or School Land Board of any part of the area included in the easement or lease.]

(2) [(4)] To pay when due to the General Land Office the necessary filing fee and rent determined by the commissioner to be adequate compensation for the use of public lands.

(3) [(5)] To record at grantee's expense any easement granted by the commissioner in the office of the county clerk of the county in which the land lies and to furnish a certificate of such recording to the commissioner.

(c) [(b)] An applicant by accepting an easement further agrees and consents to comply with and be bound by the following additional terms and conditions, excepting those which the commissioner may waive in a particular case.[-]

[(1) That in the event the easement is on submerged land and is for a pipeline construction purpose:]

[(A) to bury the pipeline below the bottom of the gulf, bay, inlet, river, or stream crossing at a depth not less than 24 inches or place on a structure of sufficient height to insure reasonable safety from sustaining flood damage;]

[(B) to water-pressure test all lines before use to 1 1/2 times the anticipated working pressure;]

[(C) to construct a steel line from new or reconditioned pipe in first class condition;]

[(D) to electrically test or X-ray any steel line field weld to insure reasonable safety from leaks;]

[(E) to dope and treat in such manner any steel line, before it is submerged, to offer reasonable resistance to the corrosive effect of salt water, but it shall not be necessary to dope and treat the portion of a steel line which is not submerged;]

[(F) to bury a pipeline in such a manner so as to evenly backfill the sand, gravel, soil, or other material excavated during construction onto the disturbed area to conform as much as is reasonably possible with the bottom profile of the adjacent natural submerged land;]

[(G) to undertake erosion preventative measures at shorelines by either terracing or excavating cuts, fills, or other disturbed areas so that they may naturally vegetate, seeding cuts and fills as soon as possible to prevent erosion, or placing gravel, stone, or rock in cuts or on fills where site factors make it unusually difficult to establish a protective vegetative cover;]

[(H) to select a right-of-way, when feasible, which avoids shell reefs, submerged grass beds, and marshes;]

[(I) to avoid or minimize clearing of natural vegetation from river or stream banks so that a screen of natural vegetation is left in the right-of-way or when feasible to cross a river or stream via existing bridges subject to safety restrictions or through an area already cleared;]

[(2)] That in the event the easement is on submerged land and is for a transmission line construction purpose:

(1) [(A)] to bury all telephone cables unless use of existing single pole, H-frame, or steel tower construction or other existing structure such as a bridge or causeway is made;

(2) [(B)] to encourage the joint use of electric transmission facilities and rights-of-way by two or more utilities, when feasible, to reduce the total number of transmission lines constructed and rights-of-way used across public lands;

(3) [(C)] to utilize, when feasible, existing rights-of-way, bridges, and causeways as an alternative to new construction of single pole, H-frame, or steel tower lines across open expanses of water, wetlands, and bays;

(4) [(D)] to strategically locate steel towers, H-frame, and single pole construction for minimum visibility and to bury lines crossing rivers within the constraints imposed by the current state of high voltage transmission technology. [;]

[(E) to undertake erosion preventative measures at shorelines by either terracing or excavating cuts, fills, or other disturbed areas so that they may naturally vegetate, seeding cuts and fills as soon as possible to prevent erosion, or placing gravel, stone or rock in cuts or on fills where site factors make it unusually difficult to establish a protective vegetative cover;]

[(3) That in the event the easement is on state-owned upland and is for a pipeline construction purpose;]

[(A) to bury any pipeline at least 24 inches below the surface and construct the same so as not to interfere with the use of the land for the grazing of livestock or for farming in the usual manner;]

[(B) to limit clearing of natural vegetation to that material which poses a hazard or a hindrance to the construction of the pipeline;]

[(C) to dispose of brush and other materials cleared from the right-of-way by methods such as sale of forest products,

on-site stacking, and/or piling of brush and tree branches for wildlife protective cover at specific locations instead of disposal by burning;]

[(D) to minimize clearing so as to leave a screen of natural vegetation where the right-of-way crosses a highway;]

[(4) That in the event the easement is on state-owned upland and is for a transmission line construction purpose;]

[(A) to limit clearing of natural vegetation to that material which poses a hazard or a hindrance to the construction or operation of the transmission line;]

[(B) to dispose of brush and other materials cleared from the right-of-way by methods such as sale of forest products, on-site stacking, and/or piling of brush and tree branches for wildlife protective cover at specific locations instead of disposal by burning;]

[(C) to minimize clearing so as to leave a screen of natural vegetation where the right-of-way crosses a highway;]

[(D) to erect any transmission line so as not to interfere with the use of the land for the grazing of livestock or for farming in the usual manner, except that the ordinary and usual poles, towers, and necessary guy wires may be erected;]

[(e) The grantee shall not construct, erect, or maintain any telephone, communication, electric transmission or power line, or oil pipelines, gas pipelines, sulphur pipelines, or other pipeline, unless the same is specifically provided for in the granting clause of the easement contract; that is, the grantee may construct, erect, or maintain only the specific kind of pipeline described in the granting clause of the contractual agreement; however, if the contract is for a pipeline, the grantee shall have the right to replace said pipeline with a larger or smaller pipe, or pipe of same size, installed alongside the line to be replaced provided the line being replaced is promptly removed upon completion of the replacement line; but it may not build another pipeline alongside its first pipeline or at any other location without an easement contract authorizing it; and if the contract is for a telephone, communication, transmission or power line, the grantee will have the right to replace poles, towers, and guy wires at their original location, and attach additional wires on the poles and towers; but it shall not erect additional poles, towers, and guy wires after it has erected the original line without an easement contract authorizing same;]

[(d) If the grantee injures or destroys any fences, bridges, buildings, or other structures on any right-of-way over public lands (other than the structures constructed by the grantee) the grantee shall, within a reasonable time, rebuild and repair the same to the extent that they will be in as good condition as they were before the grantee injured or destroyed them or pay the rightful owner of such structure for the damages sustained as the result thereof. The grantee shall pay to the commissioner of the General Land Office, for the benefit of the proper fund of the State of Texas, the amount of actual damages done to State-owned fences, bridges, buildings, and other improvements, timber, growing crops, and livestock (other than property belonging to the grantee) by reason of the constructing, erecting, maintaining, repairing, placing, and rebuilding of a line; provided that structures repaired by the grantee as prescribed above shall not be included;]

§13.13. Renewal, Assignment, Termination.

(a) An application for renewal of an existing easement or lease shall utilize the land office contract form and rate schedule, and adhere to rules in effect at the time renewal is requested. [The grantee shall apply to the commissioner in accordance with §13.11 of this title (relating to Application); except that the location map, plat of survey, and cross sectional drawings need not be submitted unless specifically requested by the commissioner.] The application should also include the existing miscellaneous easement number and the date of expiration of the ease-

ment. [In an application for renewal of an existing pipeline easement, the provisions of §13.12(b)(1)(A) through (E) of this title (relating to Nature of Grant) shall not be applicable provided the grantee furnishes the General Land Office the line design strength, and normal working pressure.]

(b) Assignment may be made of any interest rights granted in whole or in part subject to the written approval of the commissioner. [Any such assignment must be filed in triplicate accompanied by a written request for approval in which the assignee agrees to comply with all rules and regulations contained herein and in the contractual agreement. The application should also include the existing miscellaneous easement number and the date of expiration of said easement.] A fee [of \$50] payable to the General Land Office must accompany the application for approval of an assignment. No assignment shall be effective to transfer any rights until approved by the commissioner, the grantee, and the assignee.

(c) Failure to comply with these rules subjects the easement or lease to termination by the commissioner.

{(1) Upon termination of any easement which is not reinstated by the commissioner, the grantee shall, within 120 days from said termination, remove all of its personal property and all structures and manmade improvements authorized in the easement or lease contract, provided all monies due have been paid. The commissioner at his option, may permit the grantee to leave in place all or a portion of grantee's personal property and any structures and manmade improvements authorized in the easement or lease contract. The grantee shall take whatever measures as are necessary to restore the area involved as nearly as practicable to the same condition that existed prior to placement of any structure thereon, except as otherwise approved in writing by the commissioner.}

{(2) The commissioner may consent to premature termination of all or part of any contractual agreement under any of the following conditions:}

{(A) If the intended operation under contractual agreement is halted by any other governmental agency and such action is not due to action or failure to act by the grantee.}

{(B) If upon application for termination, the grantee has satisfied all conditions of the contractual agreement precedent to date of termination, unless otherwise waived by the commissioner.}

§13.17. Fees for Right-of-Way Easement.

(a) The following table lists the fees, surface damages and terms for pipeline right-of-way easements across public lands as established by the commissioner of the General Land Office. Figure: 31 TAC §13.17(a) (No change.)

(b) - (f) (No change.)

§13.19. Protection of Certain State Land.

The commissioner of the General Land Office establishes that all of the state owned lands included within the proposed additions to the coastal barrier resources system by the United States Department of the Interior's February, 1987, draft report to congress, Coastal Barrier Resources System, Proposed Recommendations for Additions to or Deletions from the Coastal Barrier Resources System, Volumes 19 and 20, are areas to be used primarily for wildlife refuge, sanctuary, recreation, or natural resources conservation purposes. Volumes 19 and 20 of the draft report are adopted by reference only for the purpose of specifying which lands are proposed for addition to the coastal barrier resources system. Copies of volumes 19 and 20 of the draft report can be obtained by sending a written request to the Texas General Land Office, [Land Management Division,] 1700 North Congress Avenue, Austin, Texas 78701.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 31, 2009.

TRD-200903863

Trace Finley

Deputy Commissioner, Policy and Governmental Affairs
General Land Office

Earliest possible date of adoption: October 18, 2009

For further information, please call: (512) 475-1859



PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 55. LAW ENFORCEMENT

SUBCHAPTER D. OPERATION GAME THIEF FUND

31 TAC §§55.111 - 55.113, 55.116

The Operation Game Thief Committee proposes amendments to §§55.111 - 55.113 and 55.116, concerning Operation Game Thief (OGT). OGT is a type of crime-stopper program designed to encourage the public to assist the Texas Parks and Wildlife Department (TPWD) in enforcing conservation laws by reporting unlawful conduct. Created in 1981 by the 67th Texas Legislature, the program offers rewards of up to \$1,000 for information leading to the arrest and conviction of persons who commit crimes involving wildlife resources. The program also provides supplemental benefits to the families of department peace officers killed in the line of duty. The program is privately funded but administered by TPWD under the provisions of Parks and Wildlife Code, Chapter 12, Subchapter C.

The proposed amendments would provide for a more expedited method of disbursing death benefits to families of peace officers killed in the line of duty, clarify the definition of "in the line of duty," provide for a more efficient method of approving routine expenditures to enhance the program, incorporate legislative changes that retroactively affect death-benefit disbursements, and make additional nonsubstantive, housekeeping-type changes.

The proposed amendment to §55.111, concerning Definitions, would alter paragraph (3) to clarify that the OGT coordinator also serves as the secretary for the OGT committee. Under Parks and Wildlife Code, §12.202(a), the director or his or her designee is required to serve as the secretary to the committee. The proposed change is necessary to clarify that the secretary and the coordinator are the same person. The proposed amendment also would alter paragraph (6) to provide that the term "director" includes any person designated by the director to act for the director. The proposed amendment is necessary to eliminate awkward sentence construction throughout the rules. The proposed amendment also would alter paragraph (8) to clarify that eligibility for reward is contingent upon arrest and conviction with respect to an eligible violation. The proposed amendment to paragraph (11) would update the definition for "line of duty". The 81st Texas Legislature enacted Senate Bill (S.B.) 872, amending Government Code, Chapter 615, which governs the provision of financial assistance to eligible survivors of certain public servants killed in the line of duty. Senate Bill 872 amended the

definition of "line of duty" in Government Code, §615.021(e)(2) to include an action performed as part of a training program the individual is required or authorized by rule, condition of employment, or law to undertake. The proposed amendment is necessary to be consistent with current statutory law.

The proposed amendment to §55.112, concerning Donations and Disbursements, would eliminate references to the "designee" of the director, for reasons already identified in the discussion of the proposed amendment to §55.111(6). The proposed amendment also would alter subsection (d) to remove a statement concerning approval of rewards and death benefits by the committee; to replace the requirement for approval of the chairman of the committee of all disbursements in excess of \$500 with a requirement that the chairman be notified in writing of all such disbursements, and to make a grammatical change in the interest of clarity. The statement regarding the approval of rewards and death benefits by the chairman of the committee is necessary because it is redundant. Parks and Wildlife Code, §12.202(c), already stipulates that four members of the committee must approve disbursement of rewards or death benefits; therefore, the current provision is unnecessary. The proposed amendment also would require the notification of the chairman of the committee of all disbursements in excess of \$500. The current rule requires the chairman of the committee to approve all disbursements other than rewards and death benefits. The OGT program is a round-the-clock program that incurs many expenses throughout the year. Since the OGT committee meets only twice per year under normal circumstances, it is therefore problematic to condition disbursements on the prior approval of the chairman. Therefore, it is necessary to provide for a mechanism that preserves oversight while providing operational flexibility. The change would require the notification of the chairman of all disbursements in excess of \$500, which will allow for the smooth day-to-day operation of the OGT program while keeping the chairman of the committee informed. The proposed amendment also would make grammatical changes to improve the readability of subsection (d) and to remove a reference to a telephone service that no longer exists.

The proposed amendment to §55.113, concerning Reporting Violations; Eligibility of Applicant, would nonsubstantively alter subsection (f) to increase readability. The current provision is a run-on sentence that it is difficult to understand.

The proposed amendment to §55.116, concerning Death Benefits: Payment, would make nonsubstantive changes regarding capitalization of titles and provide that the provisions of the subsection apply retroactively to October 1, 2008. Senate Bill 872 also amended Government Code, §615.081, which allows eligible survivors of peace officers killed in the line of duty to retroactively apply for benefits provided or created as a consequence of S.B. 872 for line-of-duty deaths occurring after 1993. The only instance of the death of a department peace officer that would be affected by S.B. 872 occurred in 2008. The proposed amendment is necessary to comply with the provisions of statutory law.

Robert Macdonald, regulations coordinator, has determined that for each of the first five years that the rules as proposed are in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rules.

Mr. Macdonald also has determined that for each of the first five years the rules as proposed are in effect, the public benefit anticipated as a result of enforcing or administering the rules as proposed will be the increased operational flexibility of a pro-

gram that protects public resources, and the consistency of the department's regulations with applicable statutory law.

Under the provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses and micro-businesses. The department has determined that there will be no direct economic effect on small or micro-businesses or persons required to comply as a result of the proposed rules. The rules would not compel or mandate any action on the part of any entity, including small businesses or microbusinesses. In particular, the proposed rules would not add new reporting or recordkeeping requirements; require any new professional expertise, capital costs, or costs for modification of existing processes or procedures; lead to loss of sales or profits; change market competition; or increase taxes or fees. Accordingly, the department has not prepared a regulatory flexibility analysis under Government Code, Chapter 2006.

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022, as the agency has determined that the rules as proposed will not impact local economies.

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules), does not apply to the proposed rules.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rules.

Comments on the proposed rules may be submitted to Major David Sinclair, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4854 (e-mail: david.sinclair@tpwd.state.tx.us).

The amendments are proposed under Parks and Wildlife Code, §12.201, which authorizes the Operation Game Thief Committee to adopt rules for the implementation of the Operation Game Thief program and maintenance of the Operation Game Thief fund.

The proposed amendments affect Parks and Wildlife Code, Chapter 12, Subchapter C.

§55.111. Definitions.

The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) - (2) (No change.)

(3) Coordinator--The staff member appointed by the director to coordinate the operation game thief program. The coordinator is also the secretary of the committee.

(4) - (5) (No change.)

(6) Director--The executive director of the Parks and Wildlife Department or his or her designee.

(7) (No change.)

(8) Eligible applicant--A person making application for a reward for furnishing information to the department which leads to an arrest and conviction for an eligible [of a] violation.

(9) - (10) (No change.)

(11) Line of duty--As defined by Government Code, §615.021. [~~That period of time when a peace officer of the depart-~~

ment is lawfully acting in an official capacity as an employee of the department.]

(12) - (13) (No change.)

§55.112. Donations and Disbursements.

(a) (No change.)

(b) Conversion of donations of real or personal property into United States currency shall be accomplished by the director ~~[or his designee]~~.

(c) (No change.)

(d) The chairman shall be notified in writing of any disbursement in excess of \$500 that is ~~[Disbursements for rewards and death benefits shall be approved by the committee. Disbursements for other expenditures] directly related to implementation of the program. A disbursement under this subsection [shall be approved by the chairman and] may include but is not limited to [costs of the WATS line and] promotional costs to enhance the fund. All donations may be used for these purposes unless otherwise specifically prohibited by the donor. All disbursements from accounts will be by check signed by the director. The committee will be furnished an annual report detailing all expenditures from the fund.~~

§55.113. Reporting Violations; Eligibility of Applicant.

(a) - (c) (No change.)

(f) Informants ~~may be identified either by [shall have the option of furnishing his] name, address and telephone number or may request an anonymous [requesting only a] code number [for anonymity]~~ which shall be used in lieu of applicant's name in all subsequent transactions with the informant.

§55.116. Death Benefits: Payment.

(a) The amount of a death benefit payment granted to an eligible recipient shall be \$25,000 and payment processing will be initiated by the coordinator ~~[Coordinator]~~, with the approval ~~[concurrence]~~ of the director of the Law Enforcement Division and the chairman ~~[Director of Law Enforcement]~~, to occur within 15 working days after the death occurs.

(b) At each meeting, the committee shall review all disbursements of death benefits made by the coordinator ~~[Coordinator]~~ since the last committee meeting and may increase the amount of any death benefit or approve additional death benefits.

(c) This section applies to any death occurring on or after October 1, 2008.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 3, 2009.

TRD-200903935

Ann Bright

Chief of Staff

Texas Parks and Wildlife Department

Earliest possible date of adoption: October 18, 2009

For further information, please call: (512) 389-4775



TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 2. SPORTS AND EVENTS TRUST FUND

SUBCHAPTER A. MAJOR EVENTS TRUST FUND

34 TAC §§2.100 - 2.105

The Comptroller of Public Accounts (comptroller) proposes new Chapter 2, concerning Sports and Events Trust Funds. New Chapter 2 is necessary to implement Senate Bill 1515, 81st Legislature, 2009. The new rules will reside under Texas Administrative Code, Title 34, Part 1, Chapter 2, new Subchapter A, Major Events Trust Fund. Subchapter A implements provisions of Texas Civil Statutes, Article 5190.14, §5A, which provides for the creation of the Major Events Trust Fund and provides for the deposit of state and local tax revenues into the trust fund for the purposes of paying costs related to attracting, making preparations for, and conducting certain statutorily identified events within the state. The new subchapter also incorporates amendments made to Texas Civil Statutes, Article 5190.14, §5A, by Senate Bill 1515, 81st Legislature, 2009. The new rules prescribe definitions to be used in this subchapter, §2.100; eligibility criteria for participation in the Major Events Trust Fund program, §2.101; establishes procedures for requesting participation in the Major Events Trust Fund, §2.102; provides reporting requirements for participating municipalities and counties, §2.103; provides reimbursement procedures for municipalities and counties to follow, §2.104; and establishes special procedures for certain large events estimated to generate over \$15 million in state and local tax revenue, §2.105.

John Heleman, Chief Revenue Estimator, has determined that for the first five-year period the rules will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Heleman also has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be in providing guidance to eligible municipalities, counties and local organizing committees seeking the assistance of the Major Events Trust Fund and the Events Trust Fund in attracting eligible events to the state or retaining eligible events in the state. The proposed new rules would have no fiscal impact on small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rules.

Comments on the proposed rules may be addressed to Robert Wood, Director, Local Government Assistance and Economic Development, P.O. Box 13528, Austin, Texas 78711. If a person wants to ensure that the comptroller considers and responds to a comment made about this proposal, then the person must ensure that the comptroller receives the comment not later than the 30th day after the issue date of the *Texas Register* in which this proposal appears. If the 30th day is a state or national holiday, Saturday, or Sunday, then the first workday after the 30th day is the deadline.

The new rules are proposed under Texas Civil Statutes, Article 5190.14, §5A(v), as added by Senate Bill 1515, 81st Legislature, 2009, which allows the comptroller to adopt rules to implement the provisions of Texas Civil Statutes, Article 5190.14, §5A.

The new rules implement Texas Civil Statutes, Article 5190.14, §5A, as amended by Senate Bill 1515, 81st Legislature, 2009.

§2.100. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Comptroller--The Comptroller of Public Accounts for the state of Texas.

(2) Endorsing county--A county that contains a site selected by a site selection organization for one or more events, or a county that:

(A) does not contain a site selected by a site selection organization for an event;

(B) is included in the market area for the event as designated by the comptroller; and

(C) is a party to an event support contract.

(3) Endorsing municipality--A municipality that contains a site selected by a site selection organization for one or more events, or a municipality that:

(A) does not contain a site selected by a site selection organization for an event;

(B) is included in the market area for the event as designated by the comptroller; and

(C) is a party to an event support contract.

(4) Event support contract--A joinder undertaking, joinder agreement (as defined in Texas Civil Statutes, Article 5190.14, §1) or a similar contract executed by a local organizing committee, an endorsing municipality or an endorsing county and a site selection organization.

(5) Event--A Super Bowl, a National Collegiate Athletic Association Final Four tournament game, the National Basketball Association All-Star Game, the National Hockey League All-Star Game, the Major League Baseball All-Star Game, a National Collegiate Athletic Association Bowl Championship Series game, a World Cup Soccer game, the World Games, a national collegiate championship of an amateur sport sanctioned by the national governing body of the sport that is recognized by the United States Olympic Committee, an Olympic activity, including a Junior or Senior activity, training program, or feeder program sanctioned by the United States Olympic Committee's Community Olympic Development Program, the Breeders' Cup World Championships, or a Formula One automobile race. The term includes any activities related to or associated with the event.

(6) Highly competitive selection process--A process in which the requestor shall document that the site selection organization:

(A) has historically considered sites outside of Texas on a competitive basis and intends to do so in the future;

(B) shall not select more than one site in Texas after considering one or more sites that are not located in Texas; and

(C) shall not select the site for the event more than one time in a calendar year.

(7) Local organizing committee--A nonprofit corporation or its successor in interest that:

(A) has been authorized by an endorsing municipality, endorsing county, or more than one endorsing municipality or county

acting collectively to pursue an application and bid with a site selection organization for selection as the site of an event; or

(B) with the authorization of an endorsing municipality, endorsing county, or more than one endorsing municipality or county acting collectively, has executed an agreement with a site selection organization regarding a bid to host an event.

(8) Market area--The geographic area within which the comptroller determines there is a reasonable likelihood of measurable economic impact directly attributable to the preparation for and presentation of the event and related activities.

(9) Requestor--An endorsing county, endorsing municipality or local organizing committee that is requesting participation in the trust fund program. The term includes one or more endorsing counties and/or one or more endorsing municipalities acting collectively.

(10) Site selection organization--The National Football League, the National Collegiate Athletic Association, the National Basketball Association, the National Hockey League, Major League Baseball, the Federation Internationale de Football Association (FIFA), the International World Games Association, the United States Olympic Committee or the national governing body of a sport that is recognized by the United States Olympic Committee, the National Thoroughbred Racing Association, Formula One Management Limited, or the Federation Internationale de l'Automobile.

(11) Trust fund--The Major Events Trust Fund.

§2.101. Eligibility.

An event is eligible for participation in the trust fund program only if

(1) a site selection organization selects a site in Texas for the event;

(2) the event will not be held more than once a calendar year in Texas; and

(3) the site selection is done through a highly competitive selection process.

§2.102. Request to Establish a Trust Fund.

(a) A request for participation in the trust fund program must contain:

(1) a letter from the municipality or county requesting participation in the trust fund program and signed by a person authorized to bind the municipality or county;

(2) a letter from the site selection organization selecting the site in Texas; and

(3) an economic impact study or other data sufficient for the comptroller to make the determination of the incremental increase in tax revenue associated with hosting the event in Texas, including a listing of any data for any related activities.

(b) The economic impact study and other data submitted must contain detailed information on the direct expenditures and direct impact data for the endorsing municipality or endorsing county hosting the event and for the requested market area. Any other data or information in the study addressing the indirect or induced impact of the event must be stated separately from the direct impact data such that the data for each can be easily distinguished.

(c) The request for participation and the economic impact report should propose the requestor's desired market area and include information to support the choice of market area. The comptroller shall make the final determination establishing the market area. An endorsing municipality or endorsing county that has been selected as the site for the event must be included in the market area for the event.

(d) A list of all related event activities proposed to be included in the trust fund estimate must include data for each activity, such as projected attendance figures, ticket sales, or any production or expenditure information related to the activity.

(e) The comptroller is not required to review or act on a request for participation that does not contain all items in subsections (a) - (d) of this section.

(f) A request for participation, including a request for determination of the amount of incremental increase in tax receipts must be submitted not earlier than one year and not later than three months before the date the event begins. Requests submitted outside this time frame shall not be reviewed.

(g) All requests must be submitted to: Deputy Comptroller, Comptroller of Public Accounts, 111 E. 17th Street, Austin, Texas 78774.

(h) The comptroller shall make a determination of the amount of incremental increase in tax receipts not later than the 30th day after the date the comptroller receives the completed request for participation and related information.

§2.103. Reporting.

(a) After the conclusion of an event, a requestor must provide information related to the event, such as attendance figures, financial information, or other public information held by the requestor that the comptroller considers necessary to evaluate the success of the trust fund program.

(b) Information provided under subsection (a) of this section, should only be provided if the requestor considers the information to be public.

§2.104. Reimbursement.

(a) Reimbursement payments from the trust fund shall be used to finance costs of the event related to:

(1) applying or bidding for selection as the site of an event in this state;

(2) making the preparations necessary and desirable for the conduct of an event in this state, including the construction or renovation of facilities to the extent authorized by law; and

(3) conducting an event in this state.

(b) Reimbursement payments from the trust fund may not be used to make payments to a site selection organization or any other entity that are not directly attributable to allowable costs described in this section. Payments to a site selection organization or any other entity are subject to verification or audit by the comptroller to ensure compliance with this subsection.

(c) No later than the date of the event, the requestor shall submit to the comptroller:

(1) a copy of the event support contract, any amendment to the contract, and any related documentation; and

(2) if an endorsing municipality or endorsing county requests to have the local tax funds withheld from amounts that would otherwise be disbursed to an endorsing municipality or endorsing county, the request must be submitted to the comptroller, with a proposed local funds withholding plan. The comptroller will make every effort to accommodate the proposed plan, but retains the authority to withhold at a different rate as necessary.

(d) No later than 90 days after the event, endorsing municipalities and endorsing counties without a proposed local funds withholding plan shall submit an amount up to or equal to the calculated local share.

(e) A disbursement request letter must contain:

(1) the Texas Taxpayer Identification Number or a comptroller form AP-152 *Texas Application for Payee Identification Number* for each endorsing municipality, endorsing county or local organizing committee (as designated by an endorsing municipality or endorsing county) receiving reimbursement directly from the comptroller;

(2) the amount to be reimbursed;

(3) a general explanation of the expenses the reimbursement represents;

(4) a statement that the money was not used to solicit the relocation of a professional sports franchise located in the state;

(5) information indicating whether payment will be made by direct deposit or by warrant;

(6) a detailed list of expenditures for reimbursement;

(7) copies of invoices for expenditures;

(8) supporting documentation showing payment of invoices; and

(9) a signed statement indicating that all payroll expenditures submitted for reimbursement have been paid.

(f) The comptroller shall return any local funds remaining unexpended in the trust fund after the reimbursement of expenditures is completed to an endorsing municipality and/or endorsing county in proportion to their initial contribution to the fund.

(g) The comptroller may request supporting documentation regarding any expenditures submitted for reimbursement.

§2.105. Events Generating Over \$15 Million in State and Local Tax Revenue.

(a) If the comptroller determines that an event will generate at least \$15 million in state and local tax revenue, the comptroller and one or more endorsing municipalities or endorsing counties may enter into an agreement to provide that an amount up to or equal to the amount of the local share of trust fund revenue be remitted to the comptroller by one or more endorsing municipalities or endorsing counties prior to the event for deposit in the trust fund. The agreement must be between the comptroller and all endorsing municipalities and endorsing counties participating in the request.

(b) After the comptroller enters into a contract under subsection (a) of this section, during the 12-month period immediately preceding the event, the comptroller may deposit into the trust fund an amount not to exceed the amount the state is required to deposit under Texas Civil Statutes, Article 5190.14, §5A(b)(1), from any amounts appropriated by the legislature for the purposes of this section.

(c) The comptroller may make disbursements from the trust fund in accordance with the agreement to pay costs relating to attracting and securing the event.

(d) An agreement under this section may provide that, following the last day of an event, the funds eligible for disbursement be held in the trust fund and made available to pay the cost of securing the event in future years.

(e) The term of an agreement under this section may not exceed 10 years and must terminate:

(1) on the final termination date provided in the agreement;

or

(2) if the event covered by the agreement is not held during any 18-month period falling within the term of the agreement.

(f) On termination of an agreement covered under this section, the total amount of the state's initial contribution under the agreement must be repaid to the state from funds subject to disbursement under Texas Civil Statutes, Article 5190.14, §5A(h), or from any other source specified in the agreement.

(g) An agreement covered under this section must include terms that the comptroller determines are necessary to protect the state's interests, including a provision for a performance bond or other guarantee of repayment if the event is not held in the state after state funds have been deposited into the trust fund under subsection (b) of this section.

(h) A requestor that is securing an event that will qualify under this section and is interested in applying under this section should notify the comptroller in writing.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 3, 2009.

TRD-200903928

Martin Cherry

General Counsel

Comptroller of Public Accounts

Earliest possible date of adoption: October 18, 2009

For further information, please call: (512) 475-0387



SUBCHAPTER B. EVENTS TRUST FUND

34 TAC §§2.200 - 2.204

The Comptroller of Public Accounts proposes new Chapter 2, concerning Sports and Events Trust Funds. New Chapter 2 is necessary to implement Senate Bill 1515, 81st Legislature, 2009. The new rules will reside under Texas Administrative Code, Title 34, Part 1, Chapter 2, new Subchapter B, Events Trust Fund. Subchapter B implements provisions of Texas Civil Statutes, Article 5190.14, §5C, which provides for the creation of the Events Trust Fund and provides for the deposit of state and local tax revenues into the trust fund for the purposes of paying costs related to attracting, making preparations for, and conducting certain qualifying sporting and non-sporting events within the state. The new subchapter also incorporates amendments made to Texas Civil Statutes, Article 5190.14, §5C, by Senate Bill 1515, 81st Legislature, 2009. The new rules prescribe definitions to be used in this subchapter, §2.200; eligibility criteria for participation in the Events Trust Fund program, §2.201; establishes procedures for requesting participation in the Event Trust Fund, §2.202; provide reporting requirements for participating municipalities and counties, §2.203; and provides reimbursement procedures for municipalities and counties to follow, §2.204.

John Heleman, Chief Revenue Estimator, has determined that for the first five-year period the rules will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Heleman also has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be in providing guidance to eligible municipalities, counties and local organizing commit-

tees seeking the assistance of the Major Events Trust Fund and the Events Trust Fund in attracting eligible events to the state or retaining eligible events in the state. The proposed new rules would have no fiscal impact on small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rules.

Comments on the proposed new rules may be addressed to Robert Wood, Director, Local Government Assistance and Economic Development, P.O. Box 13528, Austin, Texas 78711. If a person wants to ensure that the comptroller considers and responds to a comment made about this proposal, then the person must ensure that the comptroller receives the comment not later than the 30th day after the issue date of the *Texas Register* in which this proposal appears. If the 30th day is a state or national holiday, Saturday, or Sunday, then the first workday after the 30th day is the deadline.

The new rules are proposed under Texas Civil Statutes, Article 5190.14, §5C(p) as added by Senate Bill 1515, 81st Legislature, 2009, which allows the comptroller to adopt rules to implement the provisions of Texas Civil Statutes, Article 5190.14, §5C.

The new rules implement Texas Civil Statutes, Article 5190.14, §5C, as amended by Senate Bill 1515, 81st Legislature, 2009.

§2.200. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Comptroller--The Comptroller of Public Accounts for the state of Texas.

(2) Endorsing county--A county that contains a site selected by a site selection organization for one or more events.

(3) Endorsing municipality--A municipality that contains a site selected by a site selection organization for one or more events.

(4) Event support contract--A joinder undertaking, joinder agreement (as defined in Texas Civil Statutes, Article 5190.14, §1) or a similar contract executed by a local organizing committee, an endorsing municipality or an endorsing county and a site selection organization.

(5) Event--An event or a related series of events held in this state for which a local organizing committee, endorsing county, or endorsing municipality seeks approval from a site selection organization to hold the event at a site in this state. The term includes any activities related to or associated with the event.

(6) Highly competitive selection process--A process in which the requestor shall document that the site selection organization:

(A) has historically considered sites outside of Texas on a competitive basis and intends to do so in the future;

(B) shall not select more than one site in Texas or an adjoining state; and

(C) shall not select the site for the event more than one time in a calendar year.

(7) Local organizing committee--A nonprofit corporation or its successor that:

(A) has been authorized by an endorsing municipality, endorsing county, or more than one endorsing municipality or county acting collectively to pursue an application and bid with a site selection organization for selection as the site of an event; or

(B) with the authorization of an endorsing municipality, endorsing county, or more than one endorsing municipality or county acting collectively, has executed an agreement with a site selection organization regarding a bid to host an event.

(8) Requestor--An endorsing county, endorsing municipality or local organizing committee that is requesting participation in the trust fund program. The term includes one or more endorsing counties and/or one or more endorsing municipalities acting collectively.

(9) Site selection organization--An entity that conducts or considers conducting an eligible event in this state.

(10) Trust fund--The Events Trust Fund.

(11) Trust fund estimate--The comptroller's determination of the incremental increase in tax receipts eligible to be deposited in the trust fund for an eligible event.

§2.201. Eligibility.

An event is eligible for participation in the trust fund program only if:

(1) a site selection organization selects a site in Texas for the event;

(2) the event will not be held more than once a calendar year in Texas or an adjoining state; and

(3) the site selection is done through a highly competitive selection process.

§2.202. Request to Establish a Trust Fund.

(a) A request for participation in the trust fund program must contain:

(1) a letter from the municipality or county requesting participation in the trust fund program and signed by a person authorized to bind the municipality or county;

(2) a letter from the site selection organization selecting the site in Texas; and

(3) an economic impact study or other data sufficient for the comptroller to make the determination of the incremental increase in tax revenue associated with hosting the event in Texas including a listing of and data for any related activities.

(b) The economic impact study and other data submitted must contain detailed information on the direct expenditures and direct impact data for the endorsing municipality or endorsing county hosting the event. Any other data or information in the study addressing the indirect or induced impact of the event must be stated separately from the direct impact data such that the data for each can be easily distinguished.

(c) A list of all related event activities proposed to be included in the trust fund estimate must include data for each activity, such as projected attendance figures, ticket sales, or any production or expenditure information related to the activity.

(d) The comptroller is not required to review or act on a request for participation that does not contain all items in subsections (a) - (c) of this section.

(e) A request for participation, including a request for determination of the amount of incremental increase in tax receipts must be submitted not later than four months before the date the event begins. Requests submitted outside this time frame shall not be reviewed.

(f) All requests must be submitted to: Deputy Comptroller, Comptroller of Public Accounts, 111 E. 17th Street, Austin, Texas 78774.

(g) The comptroller shall make a determination of the amount of incremental increase in tax receipts not later than the 30th day after the date the comptroller receives the completed request for participation and related information.

(h) If the comptroller determines that the event has been held in the state within the previous five years, the estimated incremental increase in tax revenue will be reduced according to the following percentages, subject to adjustment to the extent the comptroller determines is necessary to reflect changes to the character, timing or location of the event:

Figure: 34 TAC §2.202(h)

§2.203. Reporting.

(a) After the conclusion of an event, a requestor must provide information related to the event, such as attendance figures, financial information, or other public information held by the requestor that the comptroller considers necessary to evaluate the success of the trust fund program.

(b) Information provided under subsection (a) of this section, should only be provided if the requestor considers the information to be public.

§2.204. Reimbursement.

(a) Reimbursement payments from the trust fund shall be used to finance costs of the event related to:

(1) applying or bidding for selection as the site of an event in this state;

(2) making the preparations necessary and desirable for the conduct of an event in this state, including the construction or renovation of facilities to the extent authorized by law; and

(3) conducting an event in this state.

(b) Reimbursement payments from the trust fund may not be used to make payments to a site selection organization or any other entity that are not directly attributable to allowable costs described in subsection (a) of this section. Payments to a site selection organization or any other entity are subject to verification or audit by the comptroller to ensure compliance with this subsection.

(c) No later than the date of the event, the requestor should submit to the comptroller:

(1) a copy of the event support contract, any amendment to the contract, and any related documentation; and

(2) if an endorsing municipality or endorsing county requests to have the local tax funds withheld from amounts that would otherwise be disbursed to an endorsing municipality or endorsing county, the request must be submitted to the comptroller, with a proposed local funds withholding plan. The comptroller will make every effort to accommodate the proposed plan, but retains the authority to withhold at a different rate as necessary.

(d) No later than 90 days after the event, endorsing municipalities and endorsing counties without a proposed local funds withholding plan shall submit an amount up to or equal to the calculated local share.

(e) A disbursement request letter must contain:

(1) the Texas Taxpayer Identification Number or a comptroller Form AP-152 Texas Application for Payee Identification Number for each endorsing municipality, endorsing county or local organizing committee (as designated by an endorsing municipality or endorsing county) receiving reimbursement directly from the comptroller;

(2) the amount to be reimbursed;

(3) a general explanation of the expenses the reimbursement represents;

(4) a statement that the money was not used to solicit the relocation of a professional sports franchise located in the state;

(5) information indicating whether the payment will be made by direct deposit or by warrant;

(6) a detailed list of expenditures for reimbursement;

(7) copies of invoices for expenditures;

(8) supporting documentation showing payment of invoices; and

(9) a signed statement indicating that all payroll expenditures submitted for reimbursement have been paid.

(f) The comptroller shall return any local funds remaining unexpended in the trust fund after the reimbursement of expenditures is completed to an endorsing municipality and/or endorsing county in proportion to their initial contribution to the fund.

(g) The comptroller may request supporting documentation regarding any expenditures submitted for reimbursement.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 3, 2009.

TRD-200903929

Martin Cherry

General Counsel

Comptroller of Public Accounts

Earliest possible date of adoption: October 18, 2009

For further information, please call: (512) 475-0387



CHAPTER 3. TAX ADMINISTRATION

SUBCHAPTER K. HOTEL OCCUPANCY TAX

34 TAC §3.161

The Comptroller of Public Accounts (comptroller) proposes an amendment to §3.161, concerning definitions, exemptions and exemption certificate. Subsection (a)(1) is being amended to clarify that a nonprofit charitable or eleemosynary organization that devotes all or substantially all of its activities to the alleviation of poverty, disease, pain, and suffering by providing medicine and medical treatment may qualify for exempt status. Subsection (a)(5) is being amended to clarify that a private club is an organization that provides members entertainment, recreation, sport, dining, social facilities, or other significant club amenities, in addition to lodging, and assesses dues, initiation fees, and other charges for special privileges or status not available to the general public. Subsection (c)(5) is amended to provide that the comptroller prescribe the form and content of an exemption certificate and delete reference to the telephone numbers for Telecommunication Device for the Deaf (TDD). Subsection (d)(2) is amended to clarify that an organization that does not provide members entertainment, recreation, sport, dining, social facilities, or other significant club amenities, in addition to lodging, and does not assess dues, initiation fees, and other charges

for special privileges or status not available to the general public is not a private club for hotel occupancy tax purposes and must collect hotel occupancy tax on rentals of rooms to members. Non-substantive changes are also made to improve grammar and general readability.

John Heleman, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Heleman also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be by clarifying the taxpayer responsibilities regarding the state hotel tax. This rule is proposed under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Bryant K. Lomax, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711.

This amendment is proposed under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The amendment implements Tax Code, §§156.001, 156.102 and 156.104.

§3.161. Definitions, Exemptions, and Exemption Certificate.

(a) Definitions. The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Charitable or eleemosynary organization--A nonprofit organization devoting all or substantially all of its activities to the alleviation of poverty, disease, pain, and suffering by providing food, clothing, ~~medicine, medical [drugs,]~~ treatment, shelter, or psychological counseling directly to indigent or similarly deserving members of society with its funds derived primarily from sources other than fees or charges for its services. If the organization engages in any substantial activity other than the activities described in this section, and those activities do not support or further the charitable purpose of that entity, it will not be considered as having been organized for purely public charity, and therefore, will not qualify for exemption under this provision. No part of the net earnings of the organization may inure to the benefit of any private party or individual other than as reasonable compensation for services rendered to the organization. Some examples of organizations that do not meet the ~~[requirements for exemption under this] definition of a charitable or eleemosynary organization~~ are fraternal organizations, lodges, fraternities, sororities, service clubs, veterans groups, mutual benefit or social groups, professional groups, trade or business groups, trade associations, medical associations, ~~chambers [chamber]~~ of commerce, and similar organizations. Even though not organized for profit and performing services that are often charitable in nature, these types of organizations do not meet the requirements for exemption under this provision.

(2) Educational organization--A nonprofit organization or governmental entity whose activities are devoted solely to systematic instruction, particularly in the commonly accepted arts, sciences, and vocations, and has a regularly scheduled curriculum, using the commonly accepted methods of teaching, a faculty of qualified instructors, and an enrolled student body or students in attendance at a place where the educational activities are regularly conducted. An organization that

has activities consisting solely of presenting discussion groups, forums, panels, lectures, or other similar programs, may qualify for exemption under this provision, if the presentations provide instruction in the commonly accepted arts, sciences, and vocations. The organization will not be considered for exemption under this provision if the systematic instruction or educational classes are incidental to some other facet of the organization's activities. No part of the net earnings of the organization may inure to the benefit of any private party or individual other than as reasonable compensation for services rendered to the organization. Some examples of organizations that do not meet the requirements for exemption under this definition are professional associations, business leagues, information resource groups, research organizations, support groups, home schools, and organizations that merely disseminate information by distributing printed publications. Entities that are defined in [the] Education Code, §61.003, as Texas public or private "institutions of higher education" are recognized for exemption under this provision. Included in the definition of "institutions of higher education" is any public technical institute, public junior college, public senior college or university, medical or dental unit, public state college, or other agency of higher education as identified in Education Code, §61.003. A Texas private "institution of higher education" is a private or independent university or college that is organized under the Texas Non-Profit Corporation Act; exempt from taxation under Article VIII, §2, of the Texas Constitution and §501(c)(3) of the Internal Revenue Code of 1986 (26 U.S.C. §501); and accredited by the Southern Association of Colleges and Schools. Beginning October 1, 2003, public and private "institutions of higher education" from other states or countries do not meet the requirements for exemption under this provision.

(3) - (4) (No change.)

(5) Private Club--An organization that provides members entertainment, recreation, sport, dining, [or] social facilities, or other significant club amenities and assesses membership dues, initiation fees, and other charges, assessments, and fees for special privileges or status not available to the general public. The rental of a room is insignificant to the purpose or purposes of the organization and members pay the membership dues, initiation fees, and other charges, assessments, and fees not just for the right to rent a room but for other significant club amenities.

(6) (No change.)

(b) (No change.)

(c) Exemption certificate.

(1) (No change.)

(2) The rental of a room or space in a hotel is exempt from tax if the person required to collect the tax receives, in good faith from a guest, a properly completed exemption certificate stating that the guest qualifies for exemption under Tax Code, §156.102 or §156.103 or other law. The exemption certificate must be supported by the following documentation:

(A) (No change.)

(B) for state officials exempted by Tax Code, §156.103(d), a Hotel Tax Photo Identification Card, as described in subsection (b)(2)(A) or (B) of this section;

(C) (No change.)

(D) for persons traveling on official business of a charitable, educational, or religious organization, as defined in subsection (a)(1), (2) or (6) of this section:

(i) (No change.)

(ii) verification that the organization is on the comptroller's list of entities that have been provided a letter of exemption; such as, a printed copy of the Comptroller of Public Accounts [~~Comptroller's~~] Internet Web site listing the organization as exempt for hotel tax.

(E) For persons traveling on official business of an organization exempt by law other than Tax Code, Chapter 156:

(i) - (ii) (No change.)

(F) (No change.)

(3) (No change.)

(4) Certain entities that are exempt from hotel tax may be issued identification numbers for administrative purpose only. The comptroller [~~Comptroller~~] may issue a tax number to an entity that is not exempt from Hotel Tax, and a tax number does not guarantee that an organization is exempt from Hotel Tax. An organization is not required to provide an identification number on the Hotel Tax Exemption Certificate.

(5) The exemption certificate must be substantially in the form provided by the Comptroller of Public Accounts and include: [~~herein adopted by reference.~~]

(A) name and address of the exempt organization;

(B) qualification for exemption under Tax Code, §156.102 or §156.103 or other law; and

(C) name and signature of the occupant or, when the exempt organization issues the certificate, the name and signature of an authorized representative.

(6) Copies of the certificate [are available for inspection at the office of the Texas Register or] may be obtained from the Comptroller of Public Accounts, P.O. Box 13528, Austin, Texas 78711-3528 or [- Copies may also be] requested by calling 512-463-4600 or our toll-free number 1-800-252-1385. [In Austin, call 463-4600. (From a Telecommunication Device for the Deaf (TDD) only, call 1-800-248-4099 toll free. In Austin the local TDD number is 463-4621.)] Taxpayers may download copies at www.window.state.tx.us.

(d) Exclusions.

(1) (No change.)

(2) Private clubs as defined in subsection (a)(5) of this section do not collect tax on rentals of rooms to members. Tax is due, however, on the rental of rooms to nonmembers. An organization is not a private club and must collect hotel occupancy tax on rentals of rooms to members and nonmembers if the organization:

(A) does not provide members entertainment, recreation, sport, dining, social facilities, or other significant club amenity in addition to lodging;

(B) does not assess membership dues, initiation fees and other charges, assessments, and fees for special privileges or status not available to the general public, and

(C) the rental of a room is not insignificant to the purpose or purposes of the organization.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 3, 2009.

◆ ◆ ◆
**SUBCHAPTER O. STATE SALES AND USE
TAX**

34 TAC §3.365

The Comptroller of Public Accounts (comptroller) proposes an amendment to §3.365, concerning sales of certain items during a three-day period in August. The name of the rule is amended to differentiate between the sales tax holiday for clothes, shoes, and school supplies and the sales tax holiday for energy star items. This rule is being amended pursuant to House Bill 1801, 81st Legislature, 2009, which expanded the exemption to include school supplies, defined "school supplies," and added exclusions to the definition of backpack. Subsection (a) has been amended to provide the definition of "school supplies" and to exclude luggage, briefcase, athletic bag, duffle bag, gym bag, computer bag, purse and framed backpack from the definition of "school backpack." Subsection (c) is amended to exclude from the exemption school supplies not listed in the definition. Subsection (e) is revised to reflect long-standing policy regarding sales of items sold in prepackaged combinations containing both exempt and non-exempt items. The taxability of the prepackaged combination is determined by the primary components. If items that qualify for the sales tax holiday exemption are the primary component of the package, the entire sales price of the package is exempt during the holiday period. Subsection (o) has been amended to provide provisions for purchases of school supplies under a business account. Conforming changes are made throughout the rule.

John Heleman, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Heleman also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be by clarifying the requirements for certain taxpayers subject to the sales tax. This rule is proposed under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Bryant K. Lomax, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711.

This amendment is proposed under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The amendment implements Tax Code, §151.327.

§3.365. Sales Tax Holiday--Clothing, Shoes and School Supplies [of Certain Items During a Three-day Period in August].

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) (No change.)

(2) Eligible item--For the purposes of this section, an article of clothing or footwear, ~~[or] a school backpack, or school supplies that are [is] eligible for the sales tax exemption established under Tax Code, §151.326 and §151.327[; respectively].~~

(3) School backpack--A pack with straps that one wears on the back, including a backpack with wheels (provided it may also be worn on the back like a traditional backpack) or a messenger bag, that is purchased for use by a student in a public or private elementary or secondary school. The term does not include an item that is commonly considered luggage, a briefcase, an athletic bag, a duffle bag, a gym bag, a computer bag, or a framed backpack.

(4) School supply--The term "school supply" has the meaning assigned by the Streamlined Sales and Use Tax Agreement adopted November 12, 2002, including all amendments made to the Agreement on or before December 14, 2006. The items set out in the following all-inclusive list are school supplies for the purpose of this exemption: binders, book bags, calculators, cellophane tape, blackboard chalk, compasses, composition books, crayons, erasers, expandable, pocket, plastic and manila folders, glue, paste, paste sticks, highlighters, index cards, index card boxes, legal pads, lunch boxes, markers, notebooks, loose leaf ruled notebook paper, copy paper, graph paper, tracing paper, manila paper, colored paper, poster board, and construction paper, pencil boxes and other school supply boxes, pencil sharpeners, pencils, pens, protractors, rulers, scissors, and writing tablets. School supply items not on this list, for example, computers and textbooks, are not eligible for the exemption.

(b) (No change.)

(c) Taxable sales. The exemption under this section does not apply to:

(1) - (3) (No change.)

(4) School supplies not listed in subsection (a)(4) of this section;

(5) [(4)] the rental of clothing or footwear. For example, the exemption under this section does not apply to the rental of formal wear, costumes, uniforms, diapers, or bowling shoes;

(6) [(5)] taxable services that are performed on the clothing or footwear, such as repair, remodeling, or maintenance services, and cleaning or laundry services. For example, sales tax is due on alterations to clothing, even though the alterations may be sold or invoiced, and the customer pays such invoice, at the same time as the clothing is being altered. If a customer purchases a pair of pants for \$90 and pays \$15 to have the pants cuffed, then the \$90 charge for the pants is exempt, but tax is due on the \$15 alterations charge; and

(7) [(6)] purchases of items that are used to make or repair eligible items, including fabric, thread, yarn, buttons, snaps, hooks, and zippers.

(d) (No change.)

(e) Sales of pre-packaged combinations [sets] containing both exempt and taxable items.

(1) When an eligible item is sold together with taxable merchandise in a pre-packaged combination [as a set] or single unit and the predominant cost of the set or unit is taxable, then[-] the full price is subject to sales tax unless the price of the eligible item is separately

stated. For example, if a boxed gift set that consists of a French-cuff dress shirt, cufflinks, and a tie tack is sold for a single price of \$95, the full price of the boxed gift set is taxable if [because] the cufflinks and tie tack are the predominant cost and the price of the shirt and tie are not [taxable and the sales price of the shirt is not] separately stated.

(2) When an eligible item is sold in a pre-packaged combination [set] that also contains taxable merchandise as a free gift and no additional charge is made for the gift, the eligible item may qualify for the exemption under this section. For example, a boxed set may contain a tie and a free tie tack. If the price of the set is the same as the price of the tie sold separately, the item that is being sold is the tie, which is exempt from tax if the tie is sold for less than \$100 during the exemption period. Note: When a retailer gives an item away free of charge, the retailer owes sales or use tax on the purchase price that the retailer paid for the item.

(f) - (n) (No change.)

(o) Documenting exempt sales.

(1) Except as provided in paragraphs (2) and (3) [paragraph (2)] of this subsection, a retailer is not required to obtain an exemption certificate on sales of eligible items during the exemption period; however, the retailer's records should clearly identify the type of item sold, the date on which the item was sold, and the sales price of the item.

(2) (No change.)

(3) If the purchaser is buying the school supplies under a business account, the retailer must obtain an exemption certificate from the purchaser certifying that the items are purchased for use by an elementary or secondary school student. "Under a business account" means the purchaser is using a business credit card or business check rather than a personal credit card or personal check; is being billed under a business account maintained at the retailer; or is using a business membership at a retailer that is membership based.

(p) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 1, 2009.

TRD-200903873

Martin Cherry

General Counsel

Comptroller of Public Accounts

Earliest possible date of adoption: October 18, 2009

For further information, please call: (512) 475-0387



SUBCHAPTER S. MOTOR FUEL TAX

34 TAC §3.432

The Comptroller of Public Accounts (comptroller) proposes an amendment to §3.432, concerning refunds on gasoline and diesel fuel tax. This amendment incorporates legislative changes in Senate Bill 254, 81st Legislature, 2009, which amended Tax Code, Chapter 162. Senate Bill 254 authorizes the refund of taxes paid on gasoline and sold to and exclusively used by a Texas volunteer fire department. Subsection (i)(1)(E) is being added. Subsection (i)(2) is amended to correct references.

John Heleman, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Heleman also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be by providing new information concerning tax responsibilities. This rule is proposed under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Bryant K. Lomax, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711.

The amendment is proposed under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of Tax Code, Title 2.

The amendment implements Tax Code, §§162.104, 162.125, 162.204, and 162.227.

§3.432. Refunds on Gasoline and Diesel Fuel Tax.

(a) - (h) (No change.)

(i) Refund or credit for gasoline or diesel fuel sold to or used by an exempt entity.

(1) A license holder, other than an aviation fuel dealer, may take a credit on a return for taxes paid on the purchase of gasoline or diesel fuel that is resold tax-free if the purchaser was one of the following [follow] entities:

(A) - (C) (No change.)

(D) a Texas non-profit electric cooperative organized under Utilities Code, Chapter 161, and telephone cooperative organized under Utilities Code, Chapter 162, and the purchase is for its exclusive use. Exclusive use by an electric or telephone cooperative means use of fuel only in motor vehicles or other equipment that the electric or telephone cooperative operates;[-]

(E) a Texas volunteer fire department when the purchase is for its exclusive use.

(2) An exempt entity enumerated in paragraph (1)(A) - (E) [(+)(A) - (D)] of this subsection, may claim a refund of taxes paid on gasoline or diesel fuel purchased for its exclusive use.

(j) - (s) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 1, 2009.

TRD-200903874

Martin Cherry

General Counsel

Comptroller of Public Accounts

Earliest possible date of adoption: October 18, 2009

For further information, please call: (512) 475-0387



34 TAC §3.442

The Comptroller of Public Accounts proposes an amendment to §3.442, concerning bad debts or accelerated credit for non-payment of taxes. This amendment incorporates legislative changes in Senate Bill 1782, 81st Legislature, 2009, which amended Tax Code, Chapter 162. Senate Bill 1782 provides that a supplier or permissive supplier will no longer be required to ratably apply payments or credits in the reduction of a customer's account between motor fuels, tax and other goods sold when the credit claimed is due to a distributor's or importer's failure to make a deferred payment of tax. The supplier or permissive supplier must claim the credit within 15 days of the payment default. The amendment requires the supplier or permissive supplier to terminate the distributor's or importer's ability to defer tax payment for one year after the credit is claimed. Subsection (c) is being amended to add the notification process for accelerated credits claimed on or after June 19, 2009, and to renumber the remaining paragraphs. Subsection (c)(7) is being added to address the suspension of a distributor's or importer's right to defer tax payments to a supplier or permissive supplier. Subsection (d) is being amended to clarify credit card sales eligible to the bad debt credit.

John Heleman, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Heleman also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be by providing new information concerning tax responsibilities. This rule is proposed under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Bryant K. Lomax, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711.

The amendment is proposed under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of Tax Code, Title 2.

The amendment implements Tax Code, §§162.113, 162.116, 162.214, and 162.217.

§3.442. *Bad Debts or Accelerated Credit for Non-Payment of Taxes.*

(a) - (b) (No change.)

(c) Accelerated Credit. If a licensed supplier or permissive supplier reported and remitted taxes on a tax return for fuel sold on account to a purchaser who is licensed as a distributor or importer at the time of the transaction and who subsequently fails to pay the taxes to the seller, the licensed supplier or permissive supplier may take a credit against tax liability on a subsequent tax return if the licensed supplier or permissive supplier notifies the comptroller of the default [within 60 days after the default occurs].

(1) The notification to the comptroller for credits claimed before June 19, 2009, must be made no later than 60 days after the date of default. The notification to the comptroller for credits claimed on or after June 19, 2009, must be made no later than 15 days after the date of default.

(2) ~~[(4)]~~ The notification to the comptroller may be made by taking a credit on an original or amended return or in writing. If the notification is in writing the [shall be provided in the form required by the comptroller, and] credits may be taken beginning with the return for the reporting month in which the notification is made. When credits are taken on a return, the licensed supplier or permissive supplier must submit with that return information required by the comptroller.

(3) ~~[(2)]~~ A licensed supplier or permissive supplier who fails to notify the comptroller of the default within the prescribed ~~[60-day]~~ period in paragraph (1) of this subsection cannot take a credit on a return, but may seek a refund of taxes based on bad debts subject to the requirements provided by subsection (b) of this section.

(4) ~~[(3)]~~ For credits claimed before June 19, 2009, all [All] payments and credits made by the purchaser must be applied to the purchaser's account to determine that non-payment amount, and if the purchaser's account contains the purchase of goods or items other than motor fuel, then the payments and credits to that account should be applied ratably between motor fuel, including tax, and other goods or items sold to the purchaser. The comptroller will only allow a credit of tax on the number of gallons represented by the motor fuel portion of the unpaid amount. The maximum amount of credit taken cannot exceed the tax paid on the fuel sold on account that has been unpaid. For credits claimed on or after June 19, 2009, the supplier or permissive supplier may claim credit on the amount of the deferred tax payment defaulted by the distributor or import.

(5) ~~[(4)]~~ If the notification of default was timely made to the comptroller as prescribed by paragraph (1) of this subsection, credits for taxes that were not collected from the licensed purchaser must be taken within four years from the date of default.

(6) ~~[(5)]~~ A distributor~~;~~ ~~supplier;~~ ~~permissive supplier;~~ or importer whose right to defer payment of tax to a supplier or permissive supplier has been suspended before June 19, 2009, may seek reinstatement of the right to defer payment when all motor fuel tax liability has been satisfied and considered in good standing with the comptroller. The distributor~~;~~ ~~supplier;~~ ~~permissive supplier;~~ or importer must request that the comptroller issue a notice of good standing for motor fuel taxes.

(7) A distributor or importer on which a supplier or permissive supplier has notified the comptroller of default of the deferred tax payment on or after June 19, 2009, loses the right to defer payment of tax to that supplier or permissive supplier for one year following the date that the supplier or permissive supplier notified the comptroller of default. The distributor or importer may seek reinstatement of the right to defer payment if the supplier or permissive supplier erroneously claimed a credit or the default was due to circumstances beyond the distributor's or importer's control, such as a bank error. Request for reinstatement of the right to defer taxes should be made to the comptroller in writing.

(d) Credit card sales. The refund for bad debts or credit for non-payment of taxes allowed under this section does not apply to sales of fuel that is delivered into the supply tank of a motor vehicle or motorboat when payment is made through the use and acceptance of a credit card. For purpose of this section, a credit card is defined as any card, plate, key, or like device by which credit is extended to and charged to the purchaser's account. Sales made through the use and acceptance of a fuel access card, where the only use of the access card is to record the quantity and type of fuel or other information acquired merely for the purpose of reconciling accounts and no credit is extended to the holder are eligible for the bad debt credit. Credit sales to commercial or agricultural customers at locations not open to the general public are eligible to the bad debt credit.

(e) - (h) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 1, 2009.

TRD-200903875

Martin Cherry

General Counsel

Comptroller of Public Accounts

Earliest possible date of adoption: October 18, 2009

For further information, please call: (512) 475-0387



TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 5. TEXAS BOARD OF PARDONS AND PAROLES

CHAPTER 150. MEMORANDUM OF UNDERSTANDING AND BOARD POLICY STATEMENTS

SUBCHAPTER A. PUBLISHED POLICIES OF THE BOARD

37 TAC §150.55

The Texas Board of Pardons and Paroles proposes amendments to 37 TAC §150.55, concerning conflict of interest policy. The amendments to §150.55 are proposed to include parole commissioners and to clearly define circumstances under which board members and parole commissioners should disqualify themselves from voting on a clemency matter or parole decision or a decision to continue, modify, or revoke parole or mandatory supervision.

Rissie Owens, Chair of the Board, determined that for each year of the first five-year period the proposed amendments are in effect, no fiscal implications exist for state or local government as a result of enforcing or administering this section.

Ms. Owens also has determined that for each year of the first five years the proposed amendments are in effect, the public benefit anticipated as a result of enforcing the amendments will be to provide a procedure for conflicts of interest. There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with the amended rule as proposed. No regulatory flexibility analysis required by House Bill 3430 is necessary.

Comments should be directed to Bettie Wells, General Counsel, Texas Board of Pardons and Paroles, 209 W. 14th Street, Suite 500, Austin, TX 78701, or by e-mail to bettie.wells@tdcj.state.tx.us. Written comments from the general public should be received within 30 days of the publication of this proposal.

The amended rule is proposed under Subtitle B, Ethics, Chapter 572, Government Code. Subtitle B, Ethics, Chapter 572, is the ethics policy of this state for state officers or state employees.

No other statutes, articles or codes are affected by these amendments.

§150.55. *Conflict of Interest Policy.*

(a) Section 1--Policy [~~policy~~].

(1) It is the policy of the Board of Pardons and Paroles (board) that no board member or parole commissioner shall have any interest, financial or otherwise, direct or indirect; or engage in any business transaction or professional activity or incur any obligations of any nature which is in substantial conflict with the proper discharge of his duties in the public interest. In implementing this policy, there are provided the following standards of conduct, disclosure, and disqualification to be observed in the performance of their official duties.

(2) A board member or parole commissioner shall respect and comply with the law and not allow his family, social, or other relationships to influence his conduct, decisions, or judgment.

(b) Section 2--Disclosure [~~disclosure~~].

(1) A board member shall submit generally and on a case by case basis written notice to the presiding officer (chair) [~~board chairman~~] of any substantial interest held by the board member in a business entity doing business with the Board of the Texas Department of Criminal Justice or its component divisions.

(2) A board member or parole commissioner having a personal or private interest in any measure, proposal, or decision pending before the board (including parole and administrative release decisions) shall immediately notify the chair [~~board chairman~~] in writing of such interest. The chair shall [~~and the board member~~] publicly disclose the board member's or parole commissioner's [~~his~~] interest to the board in a meeting of the board. The board member [~~and~~] shall not vote or otherwise participate in the decision. The disclosure shall be entered into the minutes or official record of the meeting.

(3) A board member or parole commissioner shall consider the possibility that he is involved in a conflict of interest before making any decision or vote.

(4) If a board member or parole commissioner is uncertain whether any part of the conflict of interest policy applies to him in a specific matter, he shall request the general counsel of the Board of Pardons and Paroles to determine whether a disqualifying conflict of interest exists.

(c) Section 3--Standards [~~standards~~] of Conduct [~~conduct~~].

(1) No board member or parole commissioner shall accept or solicit any gift, favor, or service that might reasonably tend to influence him in the discharge of his official duties or that he knows or should know is being offered with the intent to influence his official conduct.

(2) No board member or parole commissioner shall accept employment or engage in any business or professional activity which he might reasonably expect would require or induce him to disclose confidential information acquired by reason of his official duties.

(3) No board member or parole commissioner shall accept other employment or compensation which would reasonably be expected to impair his independence of judgment in the performance of his official duties.

(4) No board member or parole commissioner shall make personal investments that could reasonably be expected to create a substantial conflict between his private interest and the public interest.

(5) [(4)] No board member or parole commissioner shall intentionally or knowingly solicit, accept, or agree to accept any benefit

for having exercised his official powers or performed his official duties in favor of another.

(d) Section 4--Disqualification [~~disqualification~~].

(1) Disqualification. A board member or parole commissioner [~~Parole Board members~~] shall disqualify themselves from voting on all clemency matters, release on parole or mandatory supervision decisions, and decisions to continue, modify, or revoke parole or mandatory supervision when:

(A) they know that individually or as a fiduciary, they have an interest in the subject matter before them; or

(B) the board [~~Board~~] member or his/her spouse is related by affinity or consanguinity within the third degree to a person who is the subject of the decision before them.

(2) Recusal. A board member or parole commissioner [~~Parole Board members~~] shall recuse themselves from voting on all clemency matters, release on parole or mandatory supervision decisions, and decisions to continue, modify, or revoke parole or mandatory supervision when:

(A) their impartiality might reasonably be questioned;

(B) they have a personal bias or prejudice concerning the subject matter or person in the decision before them; or

(C) the board [~~Board~~] member or parole commissioner was a complainant, a material witness, or has served as counsel for the state or the defense in the prosecution of the subject of the parole decision or revocation decision before them.

(3) A board member or parole commissioner shall notify the chair and the general counsel when they disqualify or recuse themselves from voting and provide the specific reason for the disqualification or recusal.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 2, 2009.

TRD-200903923

Bettie Wells

General Counsel

Texas Board of Pardons and Paroles

Earliest possible date of adoption: October 18, 2009

For further information, please call: (512) 406-5388

◆ ◆ ◆

ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 13. CULTURAL RESOURCES

PART 3. TEXAS COMMISSION ON THE ARTS

CHAPTER 31. AGENCY PROCEDURES

13 TAC §§31.1 - 31.5, 31.8, 31.10

The Texas Commission on the Arts adopts amendments to Chapter 31, §§31.1 - 31.5, 31.8, and 31.10, concerning Agency Procedures, without changes to the proposed text as published in the July 31, 2009, issue of the *Texas Register* (34 TexReg 4987) and will not be republished.

The purpose of the amendments is to ensure consistent use of language throughout Title 13, Part 3 of the Texas Administrative Code. No substantive changes are made to the sections.

No comments were received regarding the proposed amendment to these rules.

The amendments are adopted under the Government Code, §444.009, which provides the Texas Commission on the Arts with the authority to make rules and regulations for its governance and that of its officers and committees.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 4, 2009.

TRD-200903940

Gary Gibbs, Ph.D.

Executive Director

Texas Commission on the Arts

Effective date: September 24, 2009

Proposal publication date: July 31, 2009

For further information, please call: (512) 936-6562



13 TAC §31.6, §31.9

The Texas Commission on the Arts adopts the repeal of Chapter 31, §31.6 concerning Required Advisory Panel Meetings and Required Advisory Panel Member Resignation upon Relocation Out of State and §31.9, concerning Parliamentary Authority without changes to the proposal as published in the July 31, 2009, issue of the *Texas Register* (34 TexReg 4987) and will not be republished.

The purpose of the repeals is to be consistent with changes to programs and services of the Commission as outlined in the Guide to Programs and Services as amended July 2009.

No comments were received regarding the proposed repeal of these rules.

The repeals are adopted under the Government Code, §444.009, which provides the Texas Commission on the Arts with the authority to make rules and regulations for its governance and that of its officers and committees.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 4, 2009.

TRD-200903941

Gary Gibbs, Ph.D.

Executive Director

Texas Commission on the Arts

Effective date: September 24, 2009

Proposal publication date: July 31, 2009

For further information, please call: (512) 936-6562



CHAPTER 32. MEMORANDA OF UNDERSTANDING

13 TAC §32.1

The Texas Commission on the Arts adopts amendments to Chapter 32, §32.1 concerning Memoranda of Understanding without changes to the proposed text as published in the July 31, 2009, issue of the *Texas Register* (34 TexReg 4990) and will not be republished.

The purpose of the amendments is to ensure consistent use of language throughout Title 13, Part 3 of the Texas Administrative Code. No substantive changes are made to the section.

No comments were received regarding the proposed amendment to this rule.

The amendments are adopted under the Government Code, §444.009, which provides the Texas Commission on the Arts with the authority to make rules and regulations for its governance and that of its officers and committees.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 4, 2009.

TRD-200903942
Gary Gibbs, Ph.D.
Executive Director
Texas Commission on the Arts
Effective date: September 24, 2009
Proposal publication date: July 31, 2009
For further information, please call: (512) 936-6562



CHAPTER 35. A GUIDE TO PROGRAMS AND SERVICES

13 TAC §35.1

The Texas Commission on the Arts adopts amendments to Chapter 35, §35.1, concerning A Guide to Programs and Services, without changes to the proposed text as published in the July 31, 2009, issue of the *Texas Register* (34 TexReg 4990) and will not be republished.

The purpose of the amendments is to ensure consistent use of language throughout Title 13, Part 3 of the Texas Administrative Code. No substantive changes are made to the section.

No comments were received regarding the proposed amendment to this rule.

The amendments are adopted under the Government Code, §444.009, which provides the Texas Commission on the Arts with the authority to make rules and regulations for its governance and that of its officers and committees.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 4, 2009.

TRD-200903943
Gary Gibbs, Ph.D.
Executive Director
Texas Commission on the Arts
Effective date: September 24, 2009
Proposal publication date: July 31, 2009
For further information, please call: (512) 936-6562



CHAPTER 37. APPLICATION FORMS AND INSTRUCTIONS FOR FINANCIAL ASSISTANCE

13 TAC §§37.22, 37.24, 37.28, 37.29

The Texas Commission on the Arts adopts the repeal of Chapter 37, §§37.22, 37.24, 37.28, and 37.29, concerning Application Forms and Instructions for Financial Assistance, without changes to the proposed text as published in the July 31, 2009, issue of the *Texas Register* (34 TexReg 4991) and will not be republished.

The purpose of the repeals is to be consistent with changes to programs and services of the Commission as outlined in the Guide to Programs and Services as amended July 2009.

No comments were received regarding the proposed repeal of these rules.

The repeals are adopted under the Government Code, §444.009, which provides the Texas Commission on the Arts with the authority to make rules and regulations for its governance and that of its officers and committees.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 4, 2009.

TRD-200903944
Gary Gibbs, Ph.D.
Executive Director
Texas Commission on the Arts
Effective date: September 24, 2009
Proposal publication date: July 31, 2009
For further information, please call: (512) 936-6562



TITLE 16. ECONOMIC REGULATION

PART 1. RAILROAD COMMISSION OF TEXAS

CHAPTER 8. PIPELINE SAFETY REGULATIONS

SUBCHAPTER C. REQUIREMENTS FOR NATURAL GAS PIPELINES ONLY

16 TAC §8.201

The Railroad Commission of Texas adopts amendments to §8.201, relating to Pipeline Safety Program Fees, without changes to the version published in the July 3, 2009, issue of the *Texas Register* (34 TexReg 4480), pursuant to Senate Bill 1658, 81st Texas Legislature (2009), which increases the maximum annual natural gas pipeline safety inspection fee from \$0.50 per service line to \$1.00 per service line.

The Commission adopts amendments in §8.201(b) to increase the annual assessment rate from \$0.50 to \$0.70 for each service line reported to be in service at the end of each calendar year in order meet the requirements of the pipeline safety program. The pipeline safety inspection fee was created in 2003 to support the pipeline safety program, which is funded partially by federal funds; the remainder is funded by state general revenue dollars. The fee was originally set in 2003, at \$0.37 annually for each service line reported by a natural gas distribution system; in 2007, the fee was increased to \$0.50. Increasing this fee to \$0.70 will fund the Commission's hiring of additional personnel within the Safety Division. Federal funding for the pipeline safety program is tied to the Commission's staffing levels and the Commission's program has been adversely affected by under-staffing.

The Commission received two comments on the proposed amendments. West Texas Gas, Inc., a natural gas distribu-

tion company subject to the jurisdiction of the Commission, supported the proposed fee increase and concurred with the Commission's analysis to justify the increase. The Commission thanks West Texas Gas, Inc., for its support.

Atmos Energy West Division and Atmos Energy Mid-Tex Division ("Atmos") jointly commented on the proposal and generally supported the amendments, but offered some different wording. Atmos stated that the amendment would permit a potentially significant mismatch between the amounts that natural gas system operators remit to the Commission and the amounts actually collected from customers through the surcharge reimbursement mechanism. Atmos said the amendment would limit a distribution system operator's maximum recovery rate to \$0.70 in all circumstances, without regard to whether there ultimately proves to be a discrepancy between the number of service lines reported to be in service and the number of customers actually billed. Atmos stated that for a utility that maintains a static or increasing number of service lines during the time period between the reporting date and the date of recovery, tying the maximum recovery rate to the assessment rate in this manner would produce no adverse effect. But utilities that experience a decline in the number of service lines for the time period between those dates would become under-recovered with no resource to become whole since the rule makes no provision for a recovery mechanism. Atmos suggested that the language in subsection (b)(3)(D) be changed to read: "(D) shall not exceed an amount per service or service line necessary for the operator to recover the amount paid to the Commission under paragraph (1) of this subsection . . ." Atmos asserted that this wording would address the current potential for a mismatch in the amounts remitted to the Commission and the amounts collected from customers by allowing the surcharge to be adjusted by each utility to accomplish the accurate recovery of the amounts the natural gas system operators remit to the Commission.

The Commission disagrees in part with Atmos' comments and makes no change to subsection (b)(3)(D) as proposed. The Commission recognizes that there may be a discrepancy between the number of service lines reported in service at the end of a calendar year and the number of customers that may be charged the surcharge to recover the assessment. The Commission disagrees with Atmos' assumption that the terms "service line" and "customer" are synonymous, with Atmos' assumption that the surcharge per customer is limited to the annual assessment rate, and with Atmos' conclusion that a distribution system that has fewer customers than service lines will always experience a mismatch between the amount remitted to the Commission and the amount reimbursed through the surcharge. Other than the amount of the annual fee, the wording in subsection (b)(3)(D) has remained unchanged since the initial adoption of the rule. The goal of the surcharge is to allow a distribution system to recoup from its customers as nearly as possibly the amount it has remitted to the Commission, which may require the surcharge per customer to exceed the assessment rate per service line.

The Commission adopts the amendments under Texas Utilities Code, §§121.201 - 121.210, which authorize the Commission to adopt safety standards and practices applicable to the transportation of gas and to associated pipeline facilities within Texas to the maximum degree permissible under, and to take any other requisite action in accordance with, 49 United States Code Annotated, §§60101, *et seq.*; and Texas Utilities Code, §121.211, as amended by Senate Bill 1658, 81st Texas Legislature (2009), which authorizes the Railroad Commission to adopt, by rule, an

annual inspection fee not to exceed \$1.00 for each service line reported by a natural gas distribution system subject to Chapter 121 on the Distribution Annual Report, Form RSPA F7100.1-1; and Senate Bill 1 (General Appropriations Act), 81st Texas Legislature (Regular Session, 2009), Article VI, Railroad Commission Rider 11, which requires the Commission to assess fees sufficient to generate during the 2010-2011 biennium revenue to cover the general revenue appropriation.

Texas Utilities Code, §§121.201 - 121.211, as amended by Senate Bill 1658, 81st Texas Legislature (Regular Session, 2009); and 49 United States Code Annotated, §§60101, *et seq.*, are affected by the adopted amendments.

Statutory authority: Texas Utilities Code, §§121.201 - 121.211, as amended by Senate Bill 1658, 81st Texas Legislature (Regular Session, 2009) and 49 United States Code Annotated, §§60101, *et seq.*

Cross-reference to statute: Texas Utilities Code, Chapter 121, as amended by Senate Bill 1658, 81st Texas Legislature (2009); 49 United States Code Annotated, Chapter 601; 81st Texas Legislature (2009).

Issued in Austin, Texas, on September 1, 2009.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 1, 2009.

TRD-200903881

Mary Ross McDonald

Managing Director

Railroad Commission of Texas

Effective date: September 21, 2009

Proposal publication date: July 3, 2009

For further information, please call: (512) 475-1295



CHAPTER 15. ALTERNATIVE FUELS RESEARCH AND EDUCATION DIVISION SUBCHAPTER B. PROPANE CONSUMER REBATE PROGRAM

16 TAC §15.115

The Railroad Commission of Texas adopts amendments to §15.115, relating to Availability of Funds, without changes to the version published in the July 17, 2009, issue of the *Texas Register* (34 TexReg 4711).

The adopted amendments add a reference to Texas Natural Resources Code, §113.2435, as amended by House Bill 1731, 81st Texas Legislature, Regular Session (2009). Section 113.2435 concerns money available for consumer incentive or rebate programs for alternatively fueled appliances or equipment. House Bill 1731 adds new subsection (d) to read as follows: "(d) Notwithstanding Subsection (c)(5), the commission shall make available for rebates during a fiscal year the entire amount of money made available for rebates during the preceding fiscal year that was not spent during the preceding fiscal year. The amount of money made available for rebates during the preceding fiscal year that was not spent during the preceding fiscal year

is not counted in determining the limitation on the proportion of the fund usable for the rebate program during a fiscal year." The bill requires money made available for consumer rebate programs in a fiscal year, but not spent, to be carried forward and made available for rebates the next fiscal year, notwithstanding the 50 percent limit set out in §113.2435(c)(5). In §15.115, the Commission adopts a reference to Texas Natural Resources Code, §113.2435(d).

The Commission received no comments on the proposal.

The Commission adopts the amendment under the Texas Natural Resources Code §113.241, which authorizes the Commission to adopt all necessary rules relating to activities regarding the use of LPG and other environmentally beneficial alternative fuels; §113.243, which authorizes the Commission to research, develop, and implement marketing, advertising, and informational programs relating to alternative fuels to make alternative fuels more understandable and readily available to consumers; and §113.2435, which authorizes the Commission to establish consumer rebate programs for purchasers of appliances and equipment fueled by LP-gas or other environmentally beneficial alternative fuels for the purpose of achieving energy conservation and efficiency and improving the quality of air in this state, as amended by House Bill 1731, 81st Texas Legislature (2009).

Statutory authority: Texas Natural Resources Code, §§113.241, 113.243, and 113.2435.

Cross-reference to statute: Texas Natural Resources Code, Chapter 113.

Issued in Austin, Texas, on September 1, 2009.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 1, 2009.

TRD-200903882

Mary Ross McDonald

Managing Director

Railroad Commission of Texas

Effective date: September 21, 2009

Proposal publication date: July 17, 2009

For further information, please call: (512) 475-1295

TITLE 22. EXAMINING BOARDS

PART 3. TEXAS BOARD OF CHIROPRACTIC EXAMINERS

CHAPTER 71. APPLICATIONS AND APPLICANTS

22 TAC §71.15

The Texas Board of Chiropractic Examiners (Board) adopts new §71.15, Recognized Specialties, without changes. The new rule was proposed in the June 26, 2009, issue of the *Texas Register* (34 TexReg 4269) and will not be republished. The rule lists the specialty in chiropractic radiology approved by the Board at its

meeting on February 26, 2009 and sets forth the qualifications and continuing education requirements for this specialty.

No comments were received by the Board on the proposed new rule.

The rule is adopted under Texas Occupations Code §201.152, relating to rules. Section 201.152 authorizes the Board to adopt rules necessary to regulate the practice of chiropractic.

No other statutes, articles, or codes are affected by the adopted rule.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 3, 2009.

TRD-200903930

Glenn Parker

Executive Director

Texas Board of Chiropractic Examiners

Effective date: September 23, 2009

Proposal publication date: June 26, 2009

For further information, please call: (512) 305-6901

CHAPTER 76. FORMAL SOAH PROCEEDINGS

22 TAC §76.21

The Texas Board of Chiropractic Examiners (Board) adopts new §76.21, Extensions of Time, without changes. The new rule was proposed in the June 26, 2009, issue of the *Texas Register* (34 TexReg 4269) and will not be republished.

The rule delegates to the Executive Director the authority to enter into agreements to modify time limits as provided under the Administrative Procedure Act (APA), Texas Government Code §2001.147. This new rule will allow the Board to better coordinate the presentation of proposed decisions in contested cases at the regularly scheduled quarterly meetings of the Board.

No comments were received by the Board on the proposed new rule.

The rule is adopted under Texas Occupations Code §201.152, relating to rules and §201.501, relating to disciplinary powers of the Board. Section 201.152 authorizes the Board to adopt rules necessary to regulate the practice of chiropractic. Section 201.501(d) provides that the Board's disciplinary proceedings are governed by the APA, Texas Government Code Chapter 2001.

No other statutes, articles, or codes are affected by the adopted rule.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 3, 2009.

TRD-200903931

Glenn Parker
Executive Director
Texas Board of Chiropractic Examiners
Effective date: September 23, 2009
Proposal publication date: June 26, 2009
For further information, please call: (512) 305-6901



PART 9. TEXAS MEDICAL BOARD

CHAPTER 163. LICENSURE

22 TAC §163.4

The Texas Medical Board (Board) adopts amendments to Chapter 163, §163.4, concerning Procedural Rules for Licensure Applicants, without changes to the proposed text as published in the July 10, 2009, issue of the *Texas Register* (34 TexReg 4620) and will not be republished.

The amendment to §163.4 provides limited conditions under which licensure applications and registrations will be extended.

The Board has determined that the amendment will benefit applicants and licensees to obtain registration extensions when extenuating circumstances occur.

The Board received no public written comments and no one appeared to testify at the public hearing held on August 21, 2009.

The Board sought stakeholder input through Stakeholder Group meeting on July 12, 2009. No suggested changes to the rule were made.

The amendments are adopted under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 1, 2009.

TRD-200903894
Mari Robinson, J.D.
Interim Executive Director
Texas Medical Board
Effective date: September 21, 2009
Proposal publication date: July 10, 2009
For further information, please call: (512) 305-7016



CHAPTER 183. ACUPUNCTURE

22 TAC §183.14

The Texas Medical Board (Board) adopts amendments to Chapter 183, §183.14, concerning Acudetox Specialists, without changes to the proposed text as published in the July 10, 2009, issue of the *Texas Register* (34 TexReg 4622) and will not be republished.

The amendment establishes that application and renewal fees for acudetox specialists are provided under §175.1 and §175.2 of this title.

The Board has determined that the rule change simplifies rules related to fees for acudetox specialists by having all fees in Chapter 175, rather than in Chapter 183 as well.

The Board received no public written comments and no one appeared to testify at the public hearing held on August 21, 2009.

The Board sought stakeholder input through Stakeholder Group meeting on July 12, 2009. No suggested changes to the rule were made.

The amendments are adopted under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 1, 2009.

TRD-200903895
Mari Robinson, J.D.
Interim Executive Director
Texas Medical Board
Effective date: September 21, 2009
Proposal publication date: July 10, 2009
For further information, please call: (512) 305-7016



PART 21. TEXAS STATE BOARD OF EXAMINERS OF PSYCHOLOGISTS

CHAPTER 470. ADMINISTRATIVE PROCEDURE

22 TAC §470.10

The Texas State Board of Examiners of Psychologists adopts amendments to §470.10, Subpoenas, with changes to the proposed text published in the May 15, 2009, issue of the *Texas Register* (34 TexReg 2877) and will be republished.

The amendments being adopted will conform with the Administrative Procedure Act as cited.

The adopted amendments will help to ensure protection of the public.

No comments were received regarding the adoption of the amendments.

The amendments are adopted under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

§470.10. Subpoenas.

On its own motion or, on the written request of any party to a contested case pending before it, for good cause shown and on deposit of sums that will reasonably ensure payment of the amounts estimated to accrue under Administrative Procedure Act, Tex. Gov't Code Ann. §2001.103 (relating to expenses of witness or deponent), the agency shall issue a subpoena addressed to the sheriff or to a constable to require the attendance of a witness or the production of books, records, papers, or other objects that may be necessary and proper for the purpose of a proceeding.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 2, 2009.

TRD-200903906

Sherry L. Lee

Executive Director

Texas State Board of Examiners of Psychologists

Effective date: September 22, 2009

Proposal publication date: May 15, 2009

For further information, please call: (512) 305-7700



CHAPTER 473. FEES

22 TAC §473.3

The Texas State Board of Examiners of Psychologists adopts amendments to §473.3, Annual Renewal Fee (Not Refundable), with changes to the proposed text published in the May 15, 2009, issue of the *Texas Register* (34 TexReg 2878) and will be republished.

The amendments being adopted will cover the cost of the shared Data Base Migration System and other items in accordance with the 81st Legislature.

The adopted amendments will help to ensure efficient operations of the agency.

No comments were received regarding the adoption of the amendments.

The amendments are adopted under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

§473.3. *Annual Renewal Fees (Not Refundable).*

- (a) Psychological Associate Licensure--\$124.
- (b) Psychological Associate Licensure over the age of 70--\$16.
- (c) Provisionally Licensed Psychologist--\$119.
- (d) Provisionally Licensed Psychologist over the age of 70--\$16.
- (e) Psychologist Licensure--\$215.
- (f) Psychologist Licensure over the age of 70--\$16.
- (g) Psychologist Health Service Provider Status--\$20.
- (h) Psychologist Health Service Provider status over the age of 70--No Fee.
- (i) Licensed Specialist in School Psychology--\$67.
- (j) Licensed Specialist in School Psychology over the age of 70--\$14.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 2, 2009.

TRD-200903907

Sherry L. Lee

Executive Director

Texas State Board of Examiners of Psychologists

Effective date: September 22, 2009

Proposal publication date: May 15, 2009

For further information, please call: (512) 305-7700



REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review*; (2)

notices of *intention to review*, which invite public comment to specified rules; and (3) notices of *readoption*, which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (<http://www.sos.state.tx.us/texreg>). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative Code* on the web site (<http://www.sos.state.tx.us/tac>).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

Office of the Governor

Title 1, Part 1

In accordance with §2001.039, Texas Government Code, the Office of the Governor submits the following notice of intention to review the rules found in Chapter 5 relating to the Budget and Planning Office. Review of the rules under this chapter will determine whether the reasons for adoption of the rules continue to exist.

Comments on this rule review may be submitted to David Zimmerman, Office of the Governor, at david.zimmerman@governor.state.tx.us; P.O. Box 12428, Austin, Texas 78711; or (512) 463-1788. Comments must be received no later than 30 days from the date of publication of this rule review in the *Texas Register*.

TRD-200903946
David Zimmerman
Assistant General Counsel
Office of the Governor
Filed: September 4, 2009



Texas Board of Pardons and Paroles

Title 37, Part 5

Under the 1997 General Appropriations Act, Article IX, Section 167, Review of Agency Rules, the Texas Board of Pardons and Paroles files this notice of intent to review and consider for readoption, revision, or repeal, Texas Administrative Code, Title 37, Public Safety and Corrections, Part 5, Chapter 150 (Memorandum of Understanding and Board Policy Statements), Subchapter A, Published Policies of the Board, §150.55, Conflict of Interest Policy.

The Board undertakes its review pursuant to Government Code, §2001.039, Government Code. The Board will accept comments for 30 days following the publication of this notice in the *Texas Register* and will assess whether the reasons for readopting the section under review continue to exist. The proposed rule will be open for public comment prior to final adoption by the Board, in accordance with the requirements of the Administrative Procedure Act, Government Code, Chapter 2001.

Any questions or written comments pertaining to this notice of intention to review should for the next 30-day comment period be directed to Bettie Wells, General Counsel, Texas Board of Pardons and Paroles, 209 W. 14th Street, Suite 500, Austin, TX 78701, or by e-mail to bettie.wells@tdcj.state.tx.us.

TRD-200903922
Bettie Wells
General Counsel
Texas Board of Pardons and Paroles
Filed: September 2, 2009



Adopted Rule Reviews

Texas Board of Nursing

Title 22, Part 11

The Texas Board of Nursing (Board) adopts the review of 22 Texas Administrative Code Chapter 227, *Pilot Programs for Innovative Applications to Professional Nursing Education*, pursuant to the requirements of the Government Code §2001.039. Notice of the proposed rule review was published in the August 7, 2009, issue of the *Texas Register* (34 TexReg 5417). No comments were received concerning the Board's proposed rule review.

The Board has reviewed and considered Chapter 227 for re-adoption, revision, and repeal. The Government Code §2001.039 requires each state agency to review its rules every four years and to re-adopt, re-adopt with amendments, or repeal each reviewed rule. At a minimum, an agency's review shall include an assessment of whether the reasons for initially adopting a rule continue to exist. The Board has completed its review of the rules in Chapter 227 and finds that the reasons for originally adopting these rules continue to exist. Chapter 227 was reviewed to determine whether it was obsolete, reflected current legal and policy considerations, reflected current procedures and practices of the Board, and whether it was in compliance with the Government Code Chapter 2001.

The re-adoption of Chapter 227 is authorized under the Occupations Code §301.1605. Section 301.1605 authorizes the Board to approve and adopt rules regarding pilot programs for innovative applications in the practice and regulation of professional nursing. The Board re-adopts Chapter 227 without changes, pursuant to the Government Code §2001.039 and the Occupations Code §301.151, which authorizes the Board to adopt, enforce, and repeal rules consistent with its legislative authority under the Nursing Practice Act. This concludes the review of Chapter 227. This rule review completes the implementation of the Board's rule review plan for 2007-2011 that is published on the Secretary of State's web site.

TRD-200903957

Jena R. Abel
Assistant General Counsel
Texas Board of Nursing
Filed: September 8, 2009

◆ ◆ ◆

TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word “Figure” followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 34 TAC §2.202(h)

Number of Years the Event was Held in Texas in Last Five Years	Percent of Revenue Impact Used in Trust Fund Estimate
0	100.0%
1	85.5%
2	74.6%
3	66.2%
4	59.5%
5	54.1%

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Ark-Tex Council of Governments

Request for Proposals

SUBJECT: Request for Proposals for "Intelligent Transit Software Technology" for the Ark-Tex Council of Governments (ATCOG) Rural Transit District (TRAX).

INVITATION: The purpose of this request for proposal (RFP) is to solicit the procurement and successful installation of Transit demand-response software, Mobile data computers and Automatic vehicle locators. This RFP calls for the procurement and successful installation of all three technologies as one integrated unit. All necessary components for the successful implementation of the technology will be supplied by the vendor, with the exception of the computers used for the work stations and the server. The computers will be procured by ATCOG Information Technology staff, using specifications provided by the selected vendor. The full RFP package can be viewed and downloaded on the official ATCOG website at www.atcog.org or by contacting Owetta Walton, Transportation Coordinator, Ark-Tex Council of Governments, P.O. Box 5307, Texarkana, Texas 75505-5307, phone (903) 832-8636 or email: owalton@atcog.org.

PROCURING AGENCY: Ark-Tex Council of Governments Rural Transit District

QUESTIONS: Request for revisions or exceptions to the RFP must be received in writing to the attention of Lynda Woods-Pugh, Manager of Transportation Services, Ark-Tex Council of Governments, P.O. Box 5307, Texarkana, Texas 75505-5307, by **5:00 p.m. Tuesday, September 22, 2009**. The response to all questions and requests for revisions or exceptions will be issued by ATCOG by **5:00 p.m., Monday, September 28, 2009**.

AWARD: This is a request for proposals and award will be based on project personnel, technical approach, and price.

PROPOSAL DEADLINE: Proposals shall be submitted in a sealed envelope or box clearly marked on the outside **RFP: ATCOG Transit Technology**. The technical and price proposals should be in separate, marked envelopes within the SEALED PROPOSAL. Proposals described herein can be submitted either by mail or in person on any working day between 8:00 a.m. and 5:00 p.m., until **Thursday, October 8, 2009**, to the attention of Lynda Woods-Pugh, Manager of Transportation Services, at the offices of the Ark-Tex Council of Governments located at 4808 Elizabeth Street, Texarkana, Texas 75503, or mailed to P.O. Box 5307, Texarkana, Texas 75505-5307.

PERFORMANCE: The performance period for the contracted vendor will be through the successful installation and implementation of the software, mobile data terminals and automated vehicle locators.

PERIOD: Start of the contract is estimated to be on or about November 1, 2009.

INSURANCE: Each prospective Proposer is cautioned to review the Insurance requirements.

DBE: Disadvantaged Business Enterprise (DBE) participation goal for this solicitation is 4.00 percent.

TRD-200903945

Brenda Davis
Director of Finance and Administration
Ark-Tex Council of Governments
Filed: September 4, 2009

Office of the Attorney General

Request for Applications for the Sexual Assault Prevention and Crisis Services - Federal Program

The Crime Victim Services Division (CVSD) of the Office of the Attorney General (OAG) is soliciting applications from local and statewide programs that wish to utilize Sexual Assault Prevention and Crisis Services (SAPCS) - Federal funds for projects that support the primary prevention of sexual assault or sexual violence.

Applicable Funding Source: The source of federal funds includes the Federal Department of Health and Human Services, Preventative Health and Health Services Block Grant, Catalog of Federal Domestic Assistance (CFDA) Number 93.991 and Injury Prevention and Control Research and State and Community Based Programs, CFDA Number 93.136. The federal funds are used for grant contracts supporting the primary prevention of sexual assault or sexual violence. All funding is contingent upon the appropriation of funds by the United States Congress and the Texas Legislature. The OAG makes no commitment that an application, once submitted, or a grant, once funded, will receive subsequent funding.

Eligibility Requirements: This is the second offering of FY 2010 SAPCS-Federal funding. To be eligible for this grant opportunity, the Applicant must not have been offered or awarded an FY 2010 SAPCS-Federal grant contract during the first issuance of this funding opportunity.

Eligible Applicants: Local units of government, excluding law enforcement agencies and prosecutor's offices; non-profit agencies with 26.U.S.C. 501 (c)(3) status; and state agencies are eligible to apply for a SAPCS-Federal grant.

Local Programs: Eligible local programs must meet the local program eligibility requirements for a SAPCS-State grant which means the local program must offer the following minimum services for at least nine months prior to receiving an SAPCS-Federal grant contract: 24-hour crisis hotline; crisis intervention; public education; advocacy and accompaniment to hospitals, law enforcement offices, prosecutor offices, and courts for survivors and their family members; and crisis intervention volunteer training.

Statewide Program: A statewide program, to be eligible for special project funding, must show that it supports efforts to maintain or expand existing services offered by local sexual assault programs; improve services to survivors; or other activities consistent with Texas Government Code, Chapter 420.

A local or statewide program does not have to actually apply or receive a SAPCS-State grant to meet these eligibility requirements for an SAPCS-Federal grant.

Eligibility: The OAG will initially screen each application for eligibility. Applications will be deemed ineligible if the application is submitted by an ineligible applicant; the application is not filed in the manner and form required by the Application Kit; the application is filed after the deadline established in the Application Kit; or the application does not meet other requirements as stated in the RFA and the Application Kit.

How to Obtain Application Kit: The OAG will post the Application Kit on the OAG's official agency website at <http://www.oag.state.tx.us/victims/grants.shtml>. Updates and other helpful reminders about the application process will also be posted at this location. Potential applicants are encouraged to refer to this site regularly.

Deadlines and Filing Instructions for the Grant Application:

Registration Deadline: On-line registration is required to apply for an SAPCS-Federal grant. The deadline to complete registration is 5:00 p.m. CST October 7, 2009. *If registration is not completed by the deadline, then an Application will not be accepted and is not eligible for funding.* To register go to: <http://www.oag.state.tx.us/victims/grants.shtml>.

Application Deadline: The applicant must submit its application, including all required attachments, to the OAG and the OAG must receive the submitted application and all required attachments by 5:00 p.m. CST October 7, 2009 to be considered timely filed.

Filing Instructions: **To meet the deadline, the Application must be submitted by both hard copy and email.** An Application will be considered timely filed when the OAG receives the paper (hard copies) and the electronic (email) of the Application including any required attachments in the following ways by the required deadline:

1. Hard copies - Via a Next Day Air Overnight Delivery Service:

The Applicant must use a *Next Day Air Overnight Delivery Service* that tracks its deliveries. Submission by Next Day Air Overnight Delivery Service ensures that your Application can be tracked.

The Applicant must submit one (1) original and three (3) copies of the Application including any required attachments.

The Application should be printed on 8.5 x 11 inch paper. Separate each Application with a binder clip. Do not staple or otherwise bind Applications.

The Application must be sent to the following address:

CVS GRANTS APPLICATIONS - MC 005

OFFICE OF THE ATTORNEY GENERAL

300 W 15TH ST RM 102

AUSTIN, TX 78701-1649

The OAG cannot accept Applications submitted in other formats, including walk-in, hand delivery or same day courier service.

2. Email copies:

The Applicant must submit the Excel workbook by email.

The Excel workbook must be sent to the following email address: CVS-GrantsApplications@oag.state.tx.us.

An auto-reply message will be generated by the OAG for email received at this address. If the Applicant does not receive an auto-reply message, they are strongly encouraged to contact the OAG immediately at (512) 936-1278.

The OAG will **not** consider an Application if it is not filed by the due date, 5:00 pm CST on October 7, 2009.

Minimum and Maximum Amounts of Funding Available: The minimum amount of funding all programs may apply for is \$15,000 per fiscal year. The maximum amounts of funding are as follows: new local and new statewide programs - \$18,750 per fiscal year; currently funded local programs - \$112,500 per fiscal year; and currently funded statewide programs - \$337,500 per fiscal year.

Regardless of the maximums stated above, a program may not apply, per fiscal year, for an amount higher than the SAPCS-Federal funds it received in fiscal year (FY) 2009 less any amounts awarded for "technology funds" and any amounts awarded in an FY 2009 contract extension. The amount of an award is determined solely by the OAG. The OAG may award grants at amounts above or below the established funding levels and is not obligated to fund a grant at the amount requested.

Start Date and Length of Grant Contract Period: The grant contract period (term) is up to nine months from December 1, 2009 through August 31, 2010, subject to and contingent on funding and/or approval by the OAG. The OAG may, at its discretion, opt to extend contracts for an additional twelve months.

Opportunity to Apply for Future Funding: The OAG may decide to not issue a separate Application Kit for FY2011, therefore this is notice to all applicants that failure to apply and receive funding from this Application Kit may mean that the next available opportunity to apply for SAPCS-Federal funds would be for FY 2012-2013.

No Match Requirements: There are no match requirements for SAPCS-Federal projects.

Volunteer Requirements: All SAPCS-Federal projects must have a volunteer component. Specific requirements for the volunteer component will be stated in the Application Kit.

Award Criteria: The OAG will make funding decisions that support the efficient and effective use of public funds. Scoring components will include, but are not limited to, information provided by the applicant on the proposed project activities and budget.

SAPCS Purpose Area: The purpose of the SAPCS-Federal program is to fund strategies and activities that support the primary prevention of sexual assault or sexual violence and any other purposes consistent with Texas Government Code, Chapter 420.

Staffing: All SAPCS-Federal projects must:

(a) Include a minimum of 75% of an applicant's budget in the personnel and fringe budget categories.

(b) Designate and request funding for a Primary Prevention Coordinator that is responsible for the coordination and implementation of primary prevention efforts. This position must, at a minimum, work 20 hours per week on primary prevention activities on the grant.

In addition, only those staff positions that are directly related to achieving the goals of this project will be funded (this includes staff that has direct involvement in the planning, implementation, or delivery of project activities and those who directly supervise such staff).

Preference: The OAG reserves the right to consider all other appropriations or funding an applicant currently receives when making funding decisions. The OAG may give priority to applicants that do not receive other sources of funding, including funding that originates from the Texas Compensation to Victims of Crime Fund. The OAG reserves the right to give priority to programs that provide services in certain geographic or programmatic areas.

Prohibitions on Use of Grant Funds: OAG grant funds may not be used to support or pay the costs of overtime, dues, or lobbying; any portion of the salary or any other compensation for an elected government official; the purchase of food and beverages except as allowed under Texas State Travel Guidelines; the purchase or lease of vehicles; the purchase of promotional items or recreational activities; costs of travel that are unrelated to the direct delivery of services that support the OAG funded program; the costs for consultants or vendors who participate directly in writing a grant application; or for any unallowable costs set forth in applicable state or federal law, rules, regulations, guidelines, policies, procedures or cost principles. Grant funds may not be used to purchase any other products or services the OAG identifies as inappropriate or unallowable within this RFA or the Application Kit. Additional prohibitions include, but are not limited to, using grant funds for: construction and/or renovation; development of major software applications; direct counseling, treatment, or advocacy services to victims or perpetrators of sexual violence; media or awareness campaigns that exclusively promote awareness of where to receive victim services; research; and out-of-state travel for local programs.

OAG Contact Person: If additional information is needed, contact Jennifer McShane at CVSGrantsApplications@oag.state.tx.us or (512) 936-1278.

For information regarding this publication, contact Zindia Thomas, Agency Liaison, at (512) 936-9901.

TRD-200903926

Stacey Napier

Deputy Attorney General

Office of the Attorney General

Filed: September 3, 2009



Request for Applications for the Sexual Assault Prevention and Crisis Services - State Program

The Crime Victim Services Division (CVSD) of the Office of the Attorney General (OAG) is soliciting applications from local and statewide programs that provide services to victims of sexual assault.

Applicable Funding Source: The source of state funds is a biennial appropriation by the Texas Legislature, these funds are constitutionally dedicated. Texas Code of Criminal Procedure, Article 56.541(e) authorizes the OAG to use money appropriated from the Texas Compensation to Victims of Crime Fund for grant contracts supporting victim-related services or assistance. Additional funding comes from parole fees pursuant to Texas Code of Criminal Procedure, Article 42.12, Section 19(e) and Texas Government Code, Section 508.189. All funding is contingent upon an appropriation to the OAG by the Texas Legislature. The OAG makes no commitment that an application, once submitted, or a grant, once funded, will receive subsequent funding.

Eligibility Requirements: This is the second offering of FY 2010-2011 SAPCS-State funding. To be eligible for this grant opportunity, the Applicant must not have been offered or awarded an FY 2010-2011 SAPCS-State grant contract during the first issuance of this funding opportunity.

Eligible Applicants: Local units of government, excluding law enforcement agencies and prosecutor's offices; non-profit agencies with 26.U.S.C. 501 (c)(3) status; and state agencies are eligible to apply for a Sexual Assault Prevention and Crisis Services (SAPCS) - State grant.

Local Programs: A local program must offer the following minimum services for at least nine months prior to receiving a SAPCS-State grant contract: 24-hour crisis hotline; crisis intervention; public education;

advocacy and accompaniment to hospitals, law enforcement offices, prosecutor offices, and courts for survivors and their family members; and crisis intervention volunteer training.

Statewide Program: A statewide program, to be eligible for special project funding, must show that it supports efforts to maintain or expand existing services offered by local sexual assault programs; improve services to survivors; or other activities consistent with Texas Government Code, Chapter 420.

Eligibility: The OAG will initially screen each application for eligibility. Applications will be deemed ineligible if the application is submitted by an ineligible applicant; the application is not filed in the manner and form required by the Application Kit; the application is filed after the deadline established in the Application Kit; or the application does not meet other requirements as stated in the RFA and the Application Kit.

How to Obtain Application Kit: The OAG will post the Application Kit on the OAG's official agency website at <http://www.oag.state.tx.us/victims/grants.shtml>. Updates and other helpful reminders about the application process will also be posted at this location. Potential applicants are encouraged to refer to this site regularly.

Deadlines and Filing Instructions for the Grant Application:

Registration Deadline: On-line registration is required to apply for an SAPCS-State grant. The deadline to complete registration is 5:00 p.m. CST October 9, 2009. *If registration is not completed by the deadline, then an Application will not be accepted and is not eligible for funding.* To register go to: <http://www.oag.state.tx.us/victims/grants.shtml>.

Application Deadline: The applicant must submit its application, including all required attachments, to the OAG and the OAG must receive the submitted application and all required attachments by 5:00 p.m. CST October 9, 2009 to be considered timely filed.

Filing Instructions: **To meet the deadline, the Application must be submitted by both hard copy and email.** An Application will be considered timely filed when the OAG receives the paper (hard copies) and the electronic (email) of the Application including any required attachments in the following ways by the required deadline:

1. Hard copies - Via a Next Day Air Overnight Delivery Service:

The Applicant must use a *Next Day Air Overnight Delivery Service* that tracks its deliveries. Submission by Next Day Air Overnight Delivery Service ensures that your Application can be tracked.

The Applicant must submit one (1) original and three (3) copies of the Application including any required attachments.

The Application should be printed on 8.5 x 11 inch paper. Separate each Application with a binder clip. Do not staple or otherwise bind Applications.

The Application must be sent to the following address:

CVS GRANTS APPLICATIONS - MC 005

OFFICE OF THE ATTORNEY GENERAL

300 W 15TH ST RM 102

AUSTIN, TX 78701-1649

The OAG cannot accept Applications submitted in other formats, including walk-in, hand delivery or same day courier service.

2. Email copies:

The Applicant must submit the Excel workbook by email.

The Excel workbook must be sent to the following email address: CVS-GrantsApplications@oag.state.tx.us.

An auto-reply message will be generated by the OAG for email received at this address. If the Applicant does not receive an auto-reply message, they are strongly encouraged to contact the OAG immediately at (512) 936-1278.

The OAG will **not** consider an Application if it is not filed by the due date, 5:00 pm CST on October 9, 2009.

Minimum and Maximum Amounts of Funding Available: The minimum amount of funding all programs may apply for is \$20,000 per fiscal year. The maximum amounts of funding are as follows, new local and new statewide programs: \$20,000 in FY 2010 and \$30,000 in FY 2011; currently funded local programs: \$150,000 in FY 2010 and \$200,000 in FY 2011; and currently funded statewide programs: \$225,000 in FY 2010 and \$300,000 in FY 2011.

Regardless of the maximums stated above, a program may not apply, per fiscal year, for an amount higher than the SAPCS-State funds it received in fiscal year (FY) 2009 less any amounts awarded for "technology funds" and any amounts awarded in an FY2009 contract extension. The amount of an award is determined solely by the OAG. The OAG may award grants at amounts above or below the established funding levels and is not obligated to fund a grant at the amount requested.

Start Date and Length of Grant Contract Period: The grant contract period (term) is up to twenty-one months from December 1, 2009 through August 31, 2011, subject to and contingent on funding and/or approval by the OAG.

No Match Requirements: There are no match requirements for SAPCS-State projects.

Volunteer Requirements: All SAPCS-State projects must have a volunteer component. Specific requirements for the volunteer component will be stated in the Application Kit.

Award Criteria: The OAG will make funding decisions that support the efficient and effective use of public funds. Scoring components will include, but are not limited to, information provided by the applicant on the proposed project activities and budget.

SAPCS Purpose Area: The purpose of the SAPCS-State program is to maintain or expand the existing services of local sexual assault programs and any other purposes consistent with Texas Government Code, Chapter 420.

Staffing: All SAPCS-State projects must:

(a) Include one direct victim service staff person working at least twenty hours per week or two direct victim service staff persons working at least ten hours each per week in the applicant's budget. Direct Victim Services are defined in the Definitions section of this Application Kit.

(b) Include a minimum of 75% of an Applicant's budget in the Personnel and Fringe Benefits budget categories.

The above requirements apply to all SAPCS-State Applicants, including those that rely upon volunteers or contracted staff to deliver direct victim services. The OAG may grant an exception to one or both of these requirements for projects that demonstrate a need in their Application.

In addition, an Applicant is limited to no more than six positions, no more than three of which may be positions providing administrative support to the SAPCS-State project.

Preference: The OAG reserves the right to consider all other appropriations or funding an applicant currently receives when making funding

decisions. The OAG may give priority to applicants that do not receive other sources of funding, including funding that originates from the Texas Compensation to Victims of Crime Fund. The OAG reserves the right to give priority to programs that provide services in certain geographic or programmatic areas.

Prohibitions on Use of Grant Funds: OAG grant funds may not be used to support or pay the costs of overtime, dues, or lobbying; any portion of the salary or any other compensation for an elected government official; the purchase of food and beverages except as allowed under Texas State Travel Guidelines; the purchase or lease of vehicles; the purchase of promotional items or recreational activities; out of state travel or costs of travel that are unrelated to the direct delivery of services that support the OAG funded program; the costs for consultants or vendors who participate directly in writing a grant application; or for any unallowable costs set forth in applicable state or federal law, rules, regulations, guidelines, policies, procedures or cost principles. Grant funds may not be used to purchase any other products or services the OAG identifies as inappropriate or unallowable within this RFA or the Application Kit.

OAG Contact Person: If additional information is needed, contact Jennifer McShane at CVSGrantsApplications@oag.state.tx.us or (512) 936-1278.

For information regarding this publication, contact Zindia Thomas, Agency Liaison, at (512) 936-9901.

TRD-200903927

Stacey Napier

Deputy Attorney General

Office of the Attorney General

Filed: September 3, 2009

Brazos Valley Council of Governments

Request for Proposals for Custodial Supplies and Equipment

Purchasing Solutions Alliance (PSA), acting on behalf of the Brazos Valley Council of Governments (BVCOG) and its members, is soliciting proposals for Custodial Supplies and Equipment. Sealed proposals for RFP No. 09-101 will be accepted until 2:00 p.m., Wednesday, October 7, 2009. Proposal requirements and specifications is on file and may be obtained at the offices of Purchasing Solutions Alliance (a program of the Brazos Valley Council of Governments) located at 3991 East 29th Street, Bryan, Texas 77802. For information regarding the RFP, contact Michael Lucas, Senior Contract Officer at (979) 595-2801 Extension 2035 or by email at mlucas@bvcog.org.

PSA reserves the right to reject any or all proposals and to waive informalities and irregularities.

TRD-200903958

Tom Wilkinson

Executive Director

Brazos Valley Council of Governments

Filed: September 9, 2009

Comptroller of Public Accounts

Notice of Contract Amendment and Renewal

The Comptroller of Public Accounts (Comptroller) announces this notice of amendment and renewal of a statistical consulting services contract with Analytical Systems, Inc., P.O. Box 656, Castroville, Texas 78009 (Consultant). Consultant advises the Comptroller on statistical

issues and provides other related services in connection with the Comptroller's Annual Property Value Study (Study).

The Notice of Request for Proposals (RFP 189a) was published in the August 1, 2008, issue of the *Texas Register* (33 TexReg 6185). The Notice of Award was published in the October 31, 2008, issue of the *Texas Register* (33 TexReg 8955). The total contract amount is not to exceed \$45,000.00. The term of the contract was September 1, 2008, through August 31, 2009. The renewal extends the contract through August 31, 2010. The report will be due on or about August 31, 2010.

TRD-200903937

William Clay Harris

Assistant General Counsel, Contracts

Comptroller of Public Accounts

Filed: September 4, 2009



Notice of Request for Applications

Pursuant to Chapters 403, 447 and 2305, Texas Government Code; and the American Recovery and Reinvestment Act of 2009, Public Law, PL-111-5 (ARRA or Act); and 10 Code of Federal Regulations (CFR) Parts 420 and 600; Executive Order (EO) RP-72 and related legal authority and regulations, the Comptroller of Public Accounts (Comptroller), State Energy Conservation Office (SECO), announces its Request for Applications (RFA #TR-AG1-2010) and invites applications from eligible interested governmental entities for grant assistance to retrofit and operate Alternative Fuel Vehicles (AFV) and AFV refueling stations under the State Energy Plan (SEP). The Comptroller reserves the right to award more than one grant under the terms of the RFA. If a grant award is made under the terms of the RFA, Grantee will be expected to begin performance of the grant agreement on or about November 16, 2009, or as soon thereafter as practical.

Contact: Parties interested in submitting an application should contact William Clay Harris, Assistant General Counsel, Contracts, Comptroller of Public Accounts, in the Issuing Office at: 111 E. 17th St., Room 201, Austin, Texas 78774, (512) 305-8673, to obtain a complete copy of the RFA. The Comptroller will mail copies of the RFA only to those parties specifically requesting a copy. The RFA will be available for pick-up at the above referenced address on Friday, September 18, 2009, after 10:00 a.m. Central Zone Time (CZT) and during normal business hours thereafter. The Comptroller will also make the entire RFA available electronically on the Electronic State Business Daily (ESBD) at: <http://esbd.cpa.state.tx.us> after 10:00 a.m. CZT on Friday, September 18, 2009.

Questions and Non-Mandatory Letters of Intent: All written inquiries, questions, and Non-mandatory Letters of Intent must be received at the above-referenced address not later than 2:00 p.m. CZT on Friday, September 25, 2009. Prospective applicants are encouraged to fax non-mandatory Letters of Intent and Questions to (512) 463-3669 to ensure timely receipt. Non-mandatory Letters of Intent must be addressed to William Clay Harris, Assistant General Counsel, Contracts, and must contain the information as stated in the corresponding Section of the RFA and be signed by an official of the entity. On or about Friday, October 2, 2009, the Comptroller expects to post responses to questions on the ESBD. Late Non-mandatory Letters of Intent and Questions will not be considered under any circumstances. Applicants shall be solely responsible for verifying timely receipt of Non-Mandatory Letters of Intent and Questions in the Issuing Office.

Closing Date: Applications must be delivered in the Issuing Office to the attention of the Assistant General Counsel, Contracts, no later than 2:00 p.m. CZT, on Monday, October 19, 2009. Late Applications will not be considered under any circumstances; Applicants shall be solely

responsible for verifying time receipt of applications in the Issuing Office.

Evaluation Criteria: Applications will be evaluated under the criteria outlined in the RFA. The Comptroller will make the final decision. The Comptroller reserves the right to accept or reject any or all applications submitted. The Comptroller is not obligated to execute a grant agreement on the basis of this notice or the distribution of any RFA. The Comptroller shall not pay for any costs incurred by any entity in responding to this Notice or to the RFA.

The anticipated schedule of events pertaining to this RFA is as follows: Issuance of RFA - September 18, 2009, after 10:00 a.m. CZT; Non-Mandatory Letters of Intent and Questions Due - September 25, 2009, 2:00 p.m. CZT; Official Responses to Questions posted - October 2, 2009; Applications Due - October 19, 2009, 2:00 p.m. CZT; Grant Agreement Execution - November 16, 2009, or as soon thereafter as practical; Commencement of Project - November 16, 2009, or as soon thereafter as practical.

TRD-200903963

William Clay Harris

Assistant General Counsel, Contracts

Comptroller of Public Accounts

Filed: September 9, 2009



Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.005, and 303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 09/14/09 - 09/20/09 is 18% for Consumer¹/Agricultural/Commercial²/credit through \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 09/14/09 - 09/20/09 is 18% for Commercial over \$250,000.

¹Credit for personal, family or household use.

²Credit for business, commercial, investment or other similar purpose.

TRD-200903966

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: September 9, 2009



Texas Education Agency

Request for Applications Concerning Early College High School Grant, Cycle 4

Eligible Applicants. Independent school districts, open-enrollment charter schools, and public institutions of higher education (IHEs) are eligible to apply for funding through the Early College High School (ECHS) Grant, Cycle 4, if the applicant meets all ECHS eligibility requirements, as follows. Applicants must demonstrate a commitment to designing a program that meets all ECHS requirements. The ECHS must be a collaborative partnership between a school district and an IHE; provide a course of study that enables a participating student to receive a high school diploma and either an associate's degree or 60 semester hours toward a baccalaureate degree during Grades 9-12; target and enroll a majority of students who are at risk of dropping

out of school (at risk, economically disadvantaged, English language learners, and first generation college-goers); and be an autonomous high school that is either located on a college or university campus, a stand-alone high school campus near a college or university campus, or a small learning community within a larger high school (i.e., the ECHS is physically separated from the larger high school and ECHS students are a separate cohort with their own teachers, leader, schedule, and curriculum plan) that is near a college or university campus.

One application per ECHS must be submitted. Education service centers are not eligible to apply as fiscal agents on behalf of school districts. An application may be submitted on behalf of no more than two school districts in partnership with an IHE (i.e., a two-district application). The ECHS model is complex and requires high levels of collaboration and commitment among all participants. In order to facilitate sustainable partnerships that are most beneficial to students, two-district applications must have complete support and participation from both partnering school districts and the IHE. Applicants that are currently receiving grants or have previously received grants through the Texas High School Project must be in compliance with all grant requirements, be in good standing with an existing grant, and demonstrate capacity to support this grant. Texas High School Project grants include the Early College High School Grant; the High School Redesign and Restructuring Grant; the Redesigned High School Grant; and the Texas Science, Technology, Engineering, and Math (T-STEM) Academies Grant.

Additional eligibility requirements apply. See the RFA for details. Instructions for obtaining the RFA are included in the Requesting the Application section of this notice.

Description. The purpose of the ECHS Grant, Cycle 4, is to create collaborative partnerships between school districts and IHEs to open small high schools that provide students at risk of dropping out of school, including traditionally underserved students, an opportunity to earn a high school diploma and 60 credit hours toward an associate's degree and/or a baccalaureate degree at no cost to the student.

The primary purpose of the ECHS Grant, Cycle 4, is to do the following: increase graduation rates and college enrollment for ECHS target populations; increase the number of students who graduate from high school college ready, as demonstrated through enrollment in rigorous coursework in a college-preparatory curriculum and college credit accrual in dual credit and/or Advanced Placement courses; and build strong partnerships between school districts and IHE partners that are developing and operating ECHS programs.

ECHSs are autonomous, small schools designed to create a seamless transition between high school and college. Each ECHS must serve Grades 9-12 and may serve Grades 6, 7, and 8. In order to accomplish the goals of the program, the school district or charter school and its IHE partner are required to create a memorandum of understanding that addresses issues including, but not limited to, those specified in the RFA. The ECHS will align P-16 education and provide potential savings for families and taxpayers. Students graduating from an ECHS will be prepared for post-secondary and work success.

Dates of Project. The ECHS Grant, Cycle 4, will be implemented during the 2009-2010, 2010-2011, and 2011-2012 school years. Applicants should plan for a starting date of no earlier than January 1, 2010, and an ending date of no later than May 31, 2012. The program period will be divided into two phases: Phase I: Planning Phase (January 1, 2010, to May 31, 2010), and Phase II: Implementation Phase (June 1, 2010, to May 31, 2012). Applicants must plan the ECHS during the 2009-2010 school year and must open the ECHS no later than August 2010.

Project Amount. Funding will be provided for approximately five to eight projects. Each project will receive a maximum of \$455,000 for

the 2009-2012 project period. This project is funded 100 percent with state funds.

Selection Criteria. Applications will be selected based on the ability of each applicant to carry out all requirements contained in the RFA. Reviewers will evaluate applications based on the overall quality and validity of the proposed grant programs and the extent to which the applications address the primary objectives and intent of the project. Applications must address each requirement as specified in the RFA to be considered for funding. TEA reserves the right to select from the highest-ranking applications those that address all requirements in the RFA.

TEA is not obligated to approve an application, provide funds, or endorse any application submitted in response to this RFA. This RFA does not commit TEA to pay any costs before an application is approved. The issuance of this RFA does not obligate TEA to award a grant or pay any costs incurred in preparing a response.

Requesting the Application. RFAs are no longer available in print. The announcement letter and complete RFA will be posted on the TEA website at <http://burleson.tea.state.tx.us/GrantOpportunities/forms> for viewing and downloading. In the "Select Search Options" box, select the name of the RFA from the drop-down list. Scroll down to the "Application and Support Information" section to view all documents that pertain to this RFA.

Further Information. For clarifying information about the RFA, contact Donnell Bilsby, Division of Discretionary Grants, Texas Education Agency, (512) 463-9269. In order to assure that no prospective applicant may obtain a competitive advantage because of acquisition of information unknown to other prospective applicants, any and all questions must be submitted in writing to the TEA contact persons identified in Part 2: Program Guidelines of the RFA. All questions and the written answers thereto will be posted on the TEA website in the format of Frequently Asked Questions (FAQs) at <http://burleson.tea.state.tx.us/GrantOpportunities/forms>. In the "Select Search Options" box, select the name of the RFA from the drop-down list. Scroll down to the "Application and Support Information" section to view all documents that pertain to this RFA.

Deadline for Receipt of Applications. Applications must be received in the TEA Document Control Center by 5:00 p.m. (Central Time), Tuesday, October 27, 2009, to be eligible to be considered for funding.

TRD-200903961

Cristina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

Filed: September 9, 2009

Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (the Code), §7.075. Section 7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **October 19, 2009**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a

comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on October 19, 2009**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs shall be submitted to the commission in **writing**.

(1) COMPANY: Guadalupe Alvarado dba AAA General Construction Company; DOCKET NUMBER: 2009-0813-MSW-E; IDENTIFIER: RN105706915; LOCATION: Van Horn, Culberson County; TYPE OF FACILITY: unauthorized disposal site; RULE VIOLATED: 30 Texas Administrative Code (TAC) §330.15(c), by failing to prevent the unauthorized disposal of municipal solid waste; PENALTY: \$2,500; ENFORCEMENT COORDINATOR: Ross Fife, (512) 239-2541; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1211, (915) 834-4949.

(2) COMPANY: Filiberto Barrera; DOCKET NUMBER: 2009-1365-WOC-E; IDENTIFIER: RN105751226; LOCATION: Harlingen, Cameron County; TYPE OF FACILITY: licensing; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: \$210; ENFORCEMENT COORDINATOR: Kirk Schoppe, (512) 239-0489; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(3) COMPANY: Cal-Maine Foods, Inc.; DOCKET NUMBER: 2009-0805-WQ-E; IDENTIFIER: RN103886719; LOCATION: Waelder, Gonzales County; TYPE OF FACILITY: feed mill; RULE VIOLATED: 30 TAC §305.125(1) and Texas Pollutant Discharge Elimination System (TPDES) Multi-Sector General Permit (MSGP) Number TXR050647 Part III Permit Requirements and Conditions Section A. 3., by failing to conduct a survey of potential non-storm water sources; 30 TAC §305.125(1) and TPDES MSGP Number TXR050647 Part III Permit Requirements and Conditions Section A. 5.g., by failing to conduct periodic inspections; 30 TAC §305.125(1) and TPDES MSGP Number TXR050647 Part III Permit Requirements and Conditions Section A. 5. f., by failing to establish an employee training program and conduct employee training at least once per year; and 30 TAC §305.125(1) and TPDES MSGP Number TXR050647 Part III Permit Requirements and Conditions Section A. 7., by failing to conduct annual comprehensive site compliance evaluations; PENALTY: \$10,968; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5800; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(4) COMPANY: DuPont Performance Elastomers, L.L.C. and Lucite International, Inc.; DOCKET NUMBER: 2009-0649-IWD-E; IDENTIFIER: RN100218239 and RN100216035; LOCATION: Nederland, Jefferson County; TYPE OF FACILITY: synthetic rubber manufacturing; RULE VIOLATED: the Code, §26.121(a)(3), by failing to prevent an unauthorized discharge of industrial waste into water in the state; PENALTY: \$10,000; ENFORCEMENT COORDINATOR:

Jorge Ibarra, (817) 588-5800; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(5) COMPANY: East Cedar Creek Fresh Water Supply District; DOCKET NUMBER: 2009-1164-PWS-E; IDENTIFIER: RN101436749; LOCATION: Mabank, Henderson County; TYPE OF FACILITY: public water supply (PWS); RULE VIOLATED: 30 TAC §290.46(q)(1) and (2), by failing to issue a boil water notification within 24 hours using the prescribed notification format; PENALTY: \$1,320; ENFORCEMENT COORDINATOR: Amanda Henry, (713) 767-3500; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(6) COMPANY: E. I. du Pont de Nemours and Company; DOCKET NUMBER: 2009-0600-AIR-E; IDENTIFIER: RN100542711; LOCATION: Orange, Orange County; TYPE OF FACILITY: petrochemical plant; RULE VIOLATED: 30 TAC §116.115(b)(2)(F) and (c) and §122.143(4), New Source Review (NSR) Permit Numbers 914 and 20204, Special Condition (SC) Number 1, Federal Operating Permit (FOP) Numbers O-02055 and O-02074, General Terms and Conditions and SC Numbers 8 and 15, and Texas Health and Safety Code (THSC), §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$10,790; Supplemental Environmental Project (SEP) offset amount of \$3,720 applied to Texas Parent Teacher Association - *Clean School Bus Program*; ENFORCEMENT COORDINATOR: Raymond Marlow (409) 898-3838; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(7) COMPANY: Enterprise Products Operating, LLC; DOCKET NUMBER: 2009-0621-AIR-E; IDENTIFIER: RN100228998; LOCATION: Livingston, Polk County; TYPE OF FACILITY: natural gas plant; RULE VIOLATED: 30 TAC §§116.115(b)(2)(F) and (c), 116.615(2), and 122.143(4), Air Permit Number 80400, Maximum Allowable Emissions Rate Table, FOP Number 642, SC Number (b)(7)(E)(ii), and THSC, §382.085(b), by failing to maintain allowable emissions rates; PENALTY: \$19,000; ENFORCEMENT COORDINATOR: Roshondra Lowe, (713) 767-3500; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(8) COMPANY: Exxon Mobil Corporation; DOCKET NUMBER: 2009-0654-AIR-E; IDENTIFIER: RN102212925; LOCATION: Baytown, Harris County; TYPE OF FACILITY: chemical plant; RULE VIOLATED: 30 TAC §116.715(a), Flexible Permit Number 3452, SC Number 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$9,325; SEP offset amount of \$3,730 applied to Houston-Galveston AERCO's Clean Cities/Clean Vehicles Program; ENFORCEMENT COORDINATOR: John Muennink, (361) 825-3100; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(9) COMPANY: Fruitvale Independent School District; DOCKET NUMBER: 2009-0983-MWD-E; IDENTIFIER: RN101527919; LOCATION: Van Zandt County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0012369001, Effluent Limitations and Monitoring Requirements Numbers 1 and 6, and the Code, §26.121(a)(1), by failing to comply with the permitted effluent limits for dissolved oxygen (DO) and five-day biochemical oxygen demand; PENALTY: \$5,520; ENFORCEMENT COORDINATOR: Pamela Campbell, (512) 239-4493; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(10) COMPANY: Hayward Baker, Inc.; DOCKET NUMBER: 2009-1042-AIR-E; IDENTIFIER: RN105334502; LOCATION: Rockdale, Milam County; TYPE OF FACILITY: portable soil stabilization plant; RULE VIOLATED: 30 TAC §116.110(a)(1) and THSC, §382.0518(a) and §382.085(b), by failing to obtain permit authorization; PENALTY:

\$750; ENFORCEMENT COORDINATOR: Audra Benoit, (409) 898-3838; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(11) COMPANY: Gary Humphreys; DOCKET NUMBER: 2009-0824-MSW-E; IDENTIFIER: RN104370275; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: scrap tire disposal company; RULE VIOLATED: 30 TAC §328.60(a) and §330.7(a), by failing to obtain a scrap tire storage site registration prior to storing more than 500 scrap tires on the ground; PENALTY: \$1,875; ENFORCEMENT COORDINATOR: John Shelton, (512) 239-2563; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(12) COMPANY: Huntsman Petrochemical Corporation, Huntsman International Fuels, L.P., ISP Water Management Services, LLC, Huntsman Propylene Oxide, Ltd., and Texas Petrochemicals, LP; DOCKET NUMBER: 2008-1177-IWD-E; IDENTIFIER: RN103123220; LOCATION: Port Neches, Jefferson County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0000511000, Effluent Limitations and Monitoring Requirements Number 1, and the Code, §26.121(a)(1), by failing to comply with permitted effluent limitations for total suspended solids (TSS); 30 TAC §305.125(1) and §319.7(c) and TPDES Permit Number WQ0000511000, Monitoring and Reporting Requirements Number 3.b, by failing to have records readily available for review; 30 TAC §305.125(1) and §319.11(e) and TPDES Permit Number WQ0000511000, Monitoring and Reporting Requirements Number 3.c, by failing to maintain complete records of monitoring activities; 30 TAC §305.125(1), TPDES Permit Number WQ0000511000, Permit Conditions Number 2.g, and the Code, §26.121(a)(1), by failing to prevent an unauthorized discharge of wastewater and contact storm water; 30 TAC §305.125(1) and TPDES Permit Number WQ0000511000, Monitoring and Reporting Requirements Number 5, by failing to maintain complete records of flow meter calibrations; 30 TAC §305.125(1) and §319.7(a) and TPDES Permit Number WQ0000511000, Monitoring and Reporting Requirements Number 2, by failing to maintain complete records of monitoring activities; 30 TAC §305.125(1) and TPDES Permit Number WQ0000511000, Other Requirements Number 2, by failing to properly report oil and grease results in accordance with the permit; 30 TAC §305.125(1) and §319.11(b) and TPDES Permit Number WQ0000511000, Monitoring and Reporting Requirements Number 2, by failing to use approved test procedures for the analysis of pollutants; 30 TAC §305.125(1) and §319.11(e) and TPDES Permit Number WQ0000511000, Monitoring and Reporting Requirements Number 2, by failing to properly label laboratory standard solutions; and 30 TAC §305.125(5) and TPDES Permit Number WQ0000511000, Operational Requirements Number 1, by failing to properly operate and maintain all systems of collection, treatment, and disposal; PENALTY: \$39,928; SEP offset amount of \$15,971 applied to Jefferson County Waterway and Navigation District: Texas Point Marsh Beneficial Use of Dredged Material Project; ENFORCEMENT COORDINATOR: Pamela Campbell, (512) 239-4493; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(13) COMPANY: Inayat's, Inc. dba Stop & Shop; DOCKET NUMBER: 2009-0729-PST-E; IDENTIFIER: RN101542702; LOCATION: Fort Worth, Tarrant County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of Stage II equipment; and 30 TAC §115.222(1) and THSC, §382.085(b), by failing to equip each fill pipe with a removable or permanent factory-constructed drop tube which has a maximum clearance of six inches from the tank bottom; PENALTY: \$4,796; ENFORCEMENT COORDINATOR: Ross Fife, (512) 239-2541; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(14) COMPANY: INEOS USA, LLC; DOCKET NUMBER: 2009-0758-AIR-E; IDENTIFIER: RN100238708; LOCATION: Brazoria County; TYPE OF FACILITY: petrochemical plant; RULE VIOLATED: 30 TAC §101.20(3) and §116.715(a), NSR Flexible Air Permit Number 95/PSD-TX-854 SC Number 1, and THSC, §382.085(b), by failing to comply with permitted emissions limits; PENALTY: \$10,000; ENFORCEMENT COORDINATOR: Martina Kusniadi, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(15) COMPANY: Lindsey Contractors, Inc.; DOCKET NUMBER: 2009-1071-AIR-E; IDENTIFIER: RN100829498; LOCATION: Waco, McLennan County; TYPE OF FACILITY: asphalt mixing plant; RULE VIOLATED: 30 TAC §116.115(c), Air Permit Number 42292, SC Number 6, and THSC, §382.085(b), by failing to limit opacity from the baghouse stack to 5% averaged over a six-minute period; PENALTY: \$1,250; ENFORCEMENT COORDINATOR: Suzanne Walrath, (512) 239-2134; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(16) COMPANY: Matagorda County Water Control and Improvement District Number 6; DOCKET NUMBER: 2009-0944-MWD-E; IDENTIFIER: RN101917227; LOCATION: Matagorda County; TYPE OF FACILITY: domestic wastewater system; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0010663001, Effluent Limits and Monitoring Requirements Number 1, and the Code, §26.121(a), by failing to comply with permit effluent limits for TSS; PENALTY: \$2,400; ENFORCEMENT COORDINATOR: Jeremy Escobar, (512) 239-1460; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(17) COMPANY: Quick Deal Enterprises, Inc. dba JRS Minute Maid; DOCKET NUMBER: 2009-0827-PWS-E; IDENTIFIER: RN101272649; LOCATION: Baytown, Harris County; TYPE OF FACILITY: PWS; RULE VIOLATED: 30 TAC §290.109(c)(2)(A)(i) and §290.122(c)(2)(B), and THSC, §341.033(d), by failing to collect routine distribution water samples for coliform analysis and by failing to provide public notification of the failure to sample; PENALTY: \$2,502; ENFORCEMENT COORDINATOR: Amanda Henry, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(18) COMPANY: City of San Augustine; DOCKET NUMBER: 2007-1678-PWS-E; IDENTIFIER: RN103779302; LOCATION: San Augustine, San Augustine County; TYPE OF FACILITY: PWS; RULE VIOLATED: 30 TAC §290.46(m), by failing to maintain the good working condition and general appearance of the system's facilities and equipment; 30 TAC §290.43(c)(3), by failing to have an overflow flap on the ground storage tank overflow pipe; 30 TAC §290.44(h)(1)(A), by failing to install backflow prevention assemblies at all establishments identified as a high health hazard; 30 TAC §290.46(f)(2) and (3)(A)(iv), by failing to keep on file and make available for commission review all water system operating records; 30 TAC §290.46(s)(2)(B), by failing to check the calibration of the bench-top turbidimeters; 30 TAC §290.41(e)(2)(C), by failing to maintain the sign at the raw water intake; 30 TAC §290.43(e), by failing to provide an intruder resistant fence; 30 TAC §290.46(v), by failing to ensure all electrical wiring is securely installed in compliance with a local or national electrical code; and 30 TAC §290.44(h)(4), by failing to test backflow prevention assemblies initially and annually by a recognized backflow assembly tester; PENALTY: \$9,525; SEP offset amount of \$9,525 applied to Texas Association of Resource Conservation and Development Areas, Inc. ("RC&D") - Water or Wastewater Treatment Assistance; ENFORCEMENT COORDINATOR: Tel Croston, (512) 239-5717; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(19) COMPANY: City of Seymour; DOCKET NUMBER: 2008-1717-MWD-E; IDENTIFIER: RN101609980; LOCATION: Seymour, Baylor County; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0004004000, Effluent Limitations and Monitoring Requirements Number 1, and the Code, §26.121(a), by failing to comply with permit effluent limits for total selenium; PENALTY: \$15,875; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(20) COMPANY: Southern Union Gas Services, Limited; DOCKET NUMBER: 2009-0592-AIR-E; IDENTIFIER: RN100238633; LOCATION: Winkler County; TYPE OF FACILITY: natural gas processing plant; RULE VIOLATED: 30 TAC §116.115(c), NSR Permit Number 2724, SC Number 3, and THSC, §382.085(b), by failing to maintain a minimum 95% sulfur recovery efficiency; 30 TAC §116.115(b)(2)(F), NSR Permit Number 2727, General Condition Number 8, and THSC, §382.085(b), by failing to prevent unauthorized emissions; and 30 TAC §106.6(b) and THSC, §382.085(b), by failing to operate engines C-8, C-15, and C-16 at 10% duty maximum; PENALTY: \$22,794; SEP offset amount of \$9,118 applied to RC&D - Clean School Buses; ENFORCEMENT COORDINATOR: Kirk Schoppe, (512) 239-0489; REGIONAL OFFICE: 3300 North A Street, Building 4-107, Midland, Texas 79705-5406, (432) 570-1359.

(21) COMPANY: Victoria County Water Control and Improvement District 1; DOCKET NUMBER: 2009-0662-MWD-E; IDENTIFIER: RN101516714; LOCATION: Bloomington, Victoria County; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: 30 TAC §305.125(5) and TPDES Permit Number WQ0010513002, Operational Requirements Number 1, by failing to ensure that the facility and all of its systems of collection, treatment, and disposal are properly operated and maintained; 30 TAC §305.125(4), TPDES Permit Number WQ0010513002, Permit Conditions Number 2.g., and the Code, §26.121(a), by failing to prevent the discharge of wastewater into or adjacent to water in the state; 30 TAC §305.125(1), TPDES Permit Number WQ0010513002, Effluent Limitations and Monitoring Requirements Numbers 1 and 2, and the Code, §26.121(a), by failing to comply with permit effluent limits; 30 TAC §319.4 and TPDES Permit Number WQ0010513002, Effluent Limitations and Monitoring Requirements Numbers 3 and 6, by failing to monitor the effluent characteristics at the frequency specified in the permit; 30 TAC §305.125(1) and TPDES Permit Number WQ0010513002, Operational Requirements Number 1, by failing to retain process control, maintenance, and operations records at the facility, or make them readily available for review; 30 TAC §305.125(1) and TPDES Permit Number WQ0010513002, Monitoring and Reporting Requirements Number 2, by failing to perform accurate loading calculations; 30 TAC §319.7(d) and TPDES Permit Number WQ0010513002, Monitoring and Reporting Requirements Number 1, by failing to submit the monthly effluent reports by the 20th day of the following month; 30 TAC §305.125(1) and TPDES Permit Number WQ0010513002, Monitoring and Reporting Requirements Number 7.c., by failing to report effluent violations which deviate from the permitted effluent limitation by more than 40%; 30 TAC §319.7(a) and TPDES Permit Number WQ0010513002, Monitoring and Reporting Requirements Number 1, by failing to conduct quality assurance requirements for wastewater analyses; 30 TAC §305.125(17) and TPDES Permit Number WQ0010513002, Sludge Provisions, by failing to timely submit the annual sludge report; 30 TAC §305.125(1) and §305.128 and TPDES Permit Number WQ0010513002, Monitoring and Reporting Requirements Number 10, by failing to ensure that all reports and other information requested by the executive director are signed by the authorized person; and 30 TAC §319.11(d), by failing to conform to

the flow measurements, equipment, installation, and procedures prescribed in the Water Measurement Manual, United States Department of the Interior Bureau of Reclamation, Washington, D.C., or methods that are equivalent as approved by the executive director; PENALTY: \$34,676; SEP offset amount of \$34,676 applied to Guadalupe-Blanco River Trust - Aransas National Wildlife Refuge Habitat Enhancement Project; ENFORCEMENT COORDINATOR: Jorge Ibarra, (817) 588-5800; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(22) COMPANY: Patrick D. Zavala; DOCKET NUMBER: 2009-1382-WOC-E; IDENTIFIER: RN105704506; LOCATION: Afton, Dickens County; TYPE OF FACILITY: licensing; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: \$210; ENFORCEMENT COORDINATOR: Kirk Schoppe, (512) 239-0489; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

TRD-200903949

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: September 8, 2009



Notice of Costs to Administer the Voluntary Cleanup Program

In accordance with Solid Waste Disposal Act, §361.613, Subchapter S, the executive director of the Texas Commission on Environmental Quality (TCEQ or commission) shall calculate and publish annually the commission's costs to administer the Voluntary Cleanup Program. The Innocent Owner/Operator Program, based on authority from Solid Waste Disposal Act, §361.752(b), shall also calculate and publish annually a rate established for the purposes of identifying the costs recoverable by the commission. The TCEQ is publishing the hourly billing rate of \$107 for both the Voluntary Cleanup Program and the Innocent Owner/Operator Program for Fiscal Year 2010.

The Voluntary Cleanup and The Innocent Owner/Operator Program are implemented by the same TCEQ staff. Therefore, a single hourly billing rate for both programs was derived from current projections for salaries plus the fringe benefit rate and the indirect cost rate, less federal funding and application fees, divided by the estimated hours to complete program tasks. The hourly rate for the two programs was calculated and then rounded to a whole dollar amount. Billable salary hours were derived by subtracting the release time hours from the total available hours and a further reduction of 30.50% to account for nonsite specific hours. The release time includes sick leave, jury duty, holidays, etc., and is set at 19.85% (actual rate for Fiscal Year 2009). The current fringe benefit rate is 26.01%. Fringe benefits include retirement, social security, and insurance expenses and are calculated at a rate that applies to the agency as a whole. The indirect cost rate is 27.94%. Indirect costs include allowable overhead expenses and are also calculated at a rate that applies to the whole agency. The billing process for Fiscal Year 2010 will use the hourly billing rate of \$107 for both the Voluntary Cleanup Program and the Innocent Owner/Operator Program and will not be adjusted. All travel-related expenses will be billed as a separate expense. After an applicant's initial \$1,000 application fee has been expended by the Innocent Owner/Operator Program or the Voluntary Cleanup Program review and oversight, invoices will be sent to the applicant on a monthly basis for payment of additional program expenses.

The commission anticipates receiving federal funding during Fiscal Year 2010 for the continued development and enhancement of the Voluntary Cleanup Program and the Innocent Owner/Operator Program. If

the federal funding anticipated for Fiscal Year 2010 does not become available, the commission may publish a new rate. Federal funding of the Voluntary Cleanup Program and the Innocent Owner/Operator Program should occur prior to October 1, 2009.

For more information, please contact Ms. Ashley Forbes, CA-Voluntary Cleanup Program Section, Remediation Division, Texas Commission on Environmental Quality, MC 221, 12100 Park 35 Circle, Austin, Texas 78753 or call (512) 239-0493 or email: aforbes@tceq.state.tx.us.

TRD-200903948

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: September 8, 2009



Notice of Water Quality Applications

The following notices were issued on September 1, 2009.

The following require the applicants to publish notice in a newspaper. Public comments, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THE NOTICE.

INFORMATION SECTION

GE MOBILE WATER INC which operates GE Mobile Water, Inc. - Baytown Facility, has applied for a renewal of TPDES Permit No. WQ0003964000, which authorizes to discharge ion exchange water treatment system wastes and reverse osmosis membrane cleaning wastewater at a daily average flow not to exceed 480,000 gallons per day, and a daily maximum flow not to exceed 540,000 gallons per day. The facility is located adjacent to the west side of Farm-to-Market Road 1405 and approximately 4,000 feet south of the intersection of State Highway 55 and Farm-to-Market Road 1405, east of the City of Baytown, Chambers County, Texas 77520. The TCEQ Executive Director has reviewed this action for consistency with the Texas Coastal Management Program goals and policies in accordance with the regulations of the Coastal Coordination Council and has determined that the action is consistent with the applicable CMP goals and policies.

CITY OF NAVASOTA has applied for a renewal of TPDES Permit No. WQ0010231001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,800,000 gallons per day. The facility is located at the intersection of Chase Street and Peebles Street, on the southern bank of Cedar Creek, one block north of State Highway 105 in Grimes County, Texas 77868.

THE CITY OF BRIDGEPORT has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0010389003, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 840,000 gallons per day. This facility was previously authorized under TPDES Permit No. 10389-002 which was allowed to expire December 1, 2008. The facility is located approximately 1,500 feet southwest of the intersection of State Highway 114 and Farm-to-Market Road 2123 in Wise County, Texas.

CITY OF GROVETON has applied for a renewal of TPDES Permit No. WQ0010556001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 220,000 gallons per day. The facility is located southeast of the City of Groveton on Kickapoo Road adjacent to Kickapoo Creek in Trinity County, Texas 75845.

STEPHENVILLE MOBILE HOME PARK LTD has applied for a major amendment to Permit No. WQ0013966001 to authorize replacement of surface irrigation and subsurface conventional drainfield effluent disposal methods at a daily average flow not to exceed 6,700 gallons per day with discharge of treated domestic wastewater at a daily average flow not to exceed 24,000 gallons per day. The facility is located on the south side of U.S. Highway 377 and at the intersection of U.S. Highway 377 Business and Bypass, on the east side of Stephenville in Erath County, Texas 76401.

SOUTH CENTRAL WATER COMPANY has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014941001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 75,000 gallons per day. The facility will be located approximately 400 feet south of the intersection of Shepard Branch and Shepard Hill Road in Montgomery County, Texas 77378.

If you need more information about these permit applications or the permitting process, please call the TCEQ Office of Public Assistance, Toll Free, at 1-800-687-4040. General information about the TCEQ can be found at our web site at www.tceq.state.tx.us. Si desea información en Español, puede llamar al 1-800-687-4040.

TRD-200903964

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: September 9, 2009



State Superfund Registry

The Texas Commission on Environmental Quality (TCEQ or commission) is required under the Texas Solid Waste Disposal Act, Texas Health and Safety Code (THSC), Chapter 361 to identify, to the extent feasible, and evaluate facilities which may constitute an imminent and substantial endangerment to public health and safety or to the environment due to a release or threatened release of hazardous substances into the environment. The first registry identifying these sites was published in the January 16, 1987 issue of the *Texas Register* (12 TexReg 205). In accordance with THSC, §361.181, the commission must update the state Superfund registry annually to add new facilities that have been proposed for listing in accordance with THSC, §361.184(a) and listed in accordance with §361.188(a)(1) (see also 30 Texas Administrative Code (TAC) §335.343) or to remove facilities that have been delisted in accordance with THSC, §361.189 (see also 30 TAC §335.344). The current notice also includes facilities where state Superfund action has ended, or where cleanup is being adequately addressed by other means.

In accordance with THSC, §361.188, the state Superfund registry identifying those facilities that are listed and have been determined to pose an imminent and substantial endangerment in descending order of hazard ranking system (HRS) scores are as follows.

1. Col-Tex Refinery. Located on both sides of Business Interstate Highway 20 (U.S. 80) in Colorado City, Mitchell County: tank farm and refinery.
2. J.C. Pennco Waste Oil Service. Located at 4927 Higdon Road, San Antonio, Bexar County: waste oil and used drum recycling.
3. ArChem Thames/Chelsea. Located at 13013 Conklin Lane, Houston, Harris County: specialty chemical and toll manufacturing facility.
4. Pioneer Oil and Refining Company. Located at 20280 South Payne Road, outside of Somerset, Bexar County: oil refinery.

5. Precision Machine and Supply. Located at 500 West Olive Street, Odessa, Ector County: chrome plating and machine shop.
6. Sonics International, Inc. Located north of Farm Road 101, approximately two miles west of Ranger, Eastland County: industrial waste injection wells.
7. Maintech International. Located at 8300 Old Ferry Road, Port Arthur, Jefferson County: chemical cleaning and equipment hydroblasting.
8. Federated Metals. Located at 9200 Market Street, Houston, Harris County: magnesium dross/sludge disposal, inactive landfill.
9. Niagara Chemical. Located west of the intersection of Commerce Street and Adams Avenue, Harlingen, Cameron County: pesticide formulation.
10. International Creosoting. Located at 1110 Pine Street, Beaumont, Jefferson County: wood treatment.
11. McBay Oil & Gas. Located approximately three miles northwest of Grapeland on Farm Road 1272, Houston County: oil refinery and oil reclamation plant.
12. Materials Recovery Enterprises. Located about four miles southwest of Ovalo, near U.S. Highway 83 and Farm Road 604, Taylor County: Class I industrial waste management.
13. Touns. Located on the west side of Texas 326, 2.1 miles north of its intersection with Texas 105, in Sour Lake, Hardin County: fencepost treating facility and municipal waste.
14. Harris Sand Pits. Located at 23340 South Texas 16, approximately 10.5 miles south of San Antonio at Von Ormy, Bexar County: commercial sand and clay pit.
15. JCS Company. Located north of Phalba on County Road 2415, approximately 1.5 miles west of the intersection of County Road 2403 and Texas 198, Van Zandt County: lead-acid battery recycling.
16. Jerrell B. Thompson Battery. Located north of Phalba on County Road 2410, approximately one mile north of the intersection of County Road 2410 and Texas 198, Van Zandt County: lead-acid battery recycling.
17. Spector Salvage Yard. Located at Jackson Avenue and Tenth Street, Orange, Orange County: military surplus and chemical salvage yard.
18. Hayes-Sammons Warehouse. Located at Miller Avenue and East Eighth Street, Mission, Hidalgo County: commercial grade pesticide storage.
19. Jensen Drive Scrap. Located at 3603 Jensen Drive, Houston, Harris County: scrap salvage.
20. State Highway 123 PCE Plume. Located near the intersection of State Highway 123 and Interstate Highway 35 in San Marcos, Hays County: contaminated groundwater plume.
21. Baldwin Waste Oil Company. Located on County Road 44 approximately 0.1 mile west of its intersection with Farm Road 1889, Robstown, Nueces County: waste oil processing.
22. Hall Street. Located north of the intersection of 20th Street East with California Street, north of Dickinson, Galveston County: waste disposal and landfill/open field dumping.
23. Unnamed Plating. Located at 6816 - 6824 Industrial Avenue, El Paso, El Paso County: metals processing and recovery.
24. Tricon America, Inc. Located at 101 East Hampton Road, Crowley, Tarrant County: aluminum and zinc smelting and casting.

In accordance with THSC, §361.184(a), those facilities that may pose an imminent and substantial endangerment, and that have been proposed to the state Superfund registry, are set out in descending order of HRS scores as follows.

1. Kingsland. Located in the vicinity of the 2100 and 2400 blocks of Farm-to-Market Road 1431 in the community of Kingsland, Llano County: two groundwater plumes.
2. First Quality Cylinders. Located at 931 West Laurel Street, San Antonio, Bexar County: aircraft cylinder rebuilder.
3. Rogers Delinted Cottonseed - Colorado City. Located near the intersection of Interstate Highway 20 and State Highway 208 in Colorado City, Mitchell County: former cottonseed delinting, processing.
4. Camtraco Enterprises Inc. Located at 18823 Amoco Drive in Pearland, Brazoria County, Texas. The site has been documented in the past operating as a fuel storage and fuel blending/distillation facility.
5. Industrial Road/Industrial Metals. Located at 3000 Agnes Street in Corpus Christi, Nueces County: lead acid battery recycling and copper coil salvage.
6. Tenaha Wood Treating. Located at 275 County Road 4382, about a mile and a half south of the city limits and near the intersection of U.S. Highway 96 and County Road 4382, Tenaha, Shelby County: wood treatment.
7. Poly-Cycle Industries, Inc., Tescula. Located northeast of Tescula on the southeast corner of the intersection of Farm-to-Market 2064 and County Road 4216, Cherokee County: lead acid battery recycling.
8. Sherman Foundry. Located at 532 East King Street in south central Sherman, Grayson County: cast iron foundry.
9. Process Instrumentation and Electrical (PIE). Located at the northwest corner of 48th Street and Andrews Highway (Highway 385) in Odessa, Ector County: chromium plating.
10. James Barr Facility. Located in the 3300 block of Industrial Road, Pearland, Brazoria County: vacuum truck waste storage facility.
11. Voda Petroleum, Inc. Located at 211 Duncan Street, Clarksville City, Gregg County: waste oil recycling facility.
12. Force Road Oil and Vacuum Truck Company. Located at 1722 County Road 573 (Alloy Road), approximately 1,300 feet east of the Brazoria-Fort Bend County Line, Brazoria County: oily wastewater disposal and oil recovery facility.
13. Marshall Wood Preserving. Located at 2700 West Houston Street, Marshall, Harrison County: wood treatment.
14. Avinger Development Company (ADCO). Located on the south side of Texas State Highway 155, approximately 1/4 mile east of the intersection with Texas State Highway 49, Avinger, Cass County: wood treatment.
15. Hu-Mar Chemicals. Located north of McGothlin Road, between the old Southern Pacific Railroad tracks and 12th Street, Palacios, Matagorda County: pesticide and herbicide formulation.
16. American Zinc. Located approximately 3.5 miles north of Dumas on U.S. 287 and five miles east on Farm Road 119, Moore County: zinc smelter.
17. El Paso Plating Works. Located at 2422 Wyoming Avenue, El Paso, El Paso County: metal plating.

18. Ballard Pits. Located at the end of Ballard Lane, west of its intersection with County Road 73 approximately 5.8 miles north of Robstown, Nueces County: storage and disposal of hazardous substances.

19. Cass County Wood Treating. Located at 304 Hall Street within the southeastern city limits of Linden, Cass County: wood treatment.

20. San Angelo Electrical Service Company (SESCO). Located at 926 Pulliam Street in a residential area of northeastern San Angelo, Tom Green County: electric transformer recycling.

21. Tucker Oil Refinery/Clinton Manges Oil & Refining Company. Located on the east side of U.S. Highway 79 in the rural community of Tucker, Anderson County: oil refinery.

22. Bailey Metal Processors, Inc. Located one mile northwest of Brady on Highway 87, McCulloch County: scrap metal dealer, primarily conducting copper and lead reclamation.

23. City View Road Groundwater Plume. Located northwest of the intersection of Interstate Highway 20 and State Highway 158, Midland County: groundwater contamination plume.

24. Mineral Wool Insulation Manufacturing Company. Located on Shaw Road at the northwest corner of the city limits of Rogers, Bell County: mineral wool manufacturing.

25. Woodward Industries, Inc., Nacogdoches County. Located on County 816, about 6 miles north of the city of Nacogdoches in Nacogdoches County: wood treating.

Since the last *Texas Register* publication on October 10, 2008 (33 TexReg 8605), the TCEQ has determined that one facility, Camtraco Enterprises site, located at 18823 Amoco Drive in Pearland, Brazoria County, may pose an imminent and substantial endangerment to public health and safety or the environment, and pursuant to THSC, §361.184(a) has been added to the list of sites proposed to the state Superfund registry. No additional sites were proposed to the state Superfund registry.

To date, 46 sites have been deleted from the state Superfund registry in accordance with THSC, §361.189 (see also THSC, §361.183(a) and 30 TAC §335.344): Aluminum Finishing Company, Harris County; Aztec Ceramics, Bexar County; Aztec Mercury, Brazoria County; Barlow's Wills Point Plating, Van Zandt County; Bestplate, Inc., Dallas County; Butler Ranch, Karnes County; Cox Road Dump Site, Liberty County; Crim-Hammett, Rusk County; Dorchester Refining Company, Titus County; Double R Plating Company, Cass County; Gulf Metals Industries, Harris County; Hagerson Road Drum, Fort Bend County; Harkey Road, Brazoria County; Hart Creosoting, Jasper County; Harvey Industries, Inc., Henderson County; Hicks Field Sewer Corporation, Tarrant County; Hi-Yield, Hunt County; Higgins Wood Preserving, Angelina County; Houston Lead, Harris County; Houston Scrap, Harris County; Kingsbury Metal Finishing, Guadalupe County; LaPata Oil Company, Harris County; Lyon Property, Kimble County; McNabb Flying Service, Brazoria County; Melton Kelly Property, Navarro County; Munoz Borrow Pits, Hidalgo County; Newton Wood Preserving, Newton County; Old Lufkin Creosoting, Angelina County; Permian Chemical, Ector County; Phipps Plating, Bexar County; PIP Minerals, Liberty County; Poly-Cycle Industries, Ellis County; Poly-Cycle Industries, Jacksonville, Cherokee County; Rio Grande Refinery I, Hardin County; Rio Grande Refinery II, Hardin County; Rogers Delinted Cottonseed-Farmersville, Collin County; Sampson Horrice, Dallas County; Shelby Wood Specialty, Inc., Shelby County; Solvent Recovery Services, Fort Bend County; South Texas Solvents, Nueces County; State Marine, Jefferson County; Stoller Chemical Company, Hale County; Texas American Oil, Ellis County; Thompson Hayward Chemical, Knox County; Waste Oil Tank Services, Harris County; and Wortham Lead Salvage, Henderson County.

The public records for each of the sites are available for inspection and copying during regular TCEQ business hours at the TCEQ Records Management Center, Building E, North Entrance, 12100 Park 35 Circle, Austin, Texas 78753, telephone 1-800-633-9363 or (512) 239-2920. Handicapped parking is available on the east side of Building D, convenient to access ramps that are located between Buildings D and E. There is no charge for viewing the files; however, copying of file information is subject to payment of a fee.

TRD-200903952

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: September 8, 2009

General Land Office

Notice of Invitation for Offer for Renewal of Major Consulting Services

The Texas General Land Office (GLO) is seeking a consultant to provide services related to the Texas Coastal Ocean Observation Network (TCOON). The consultant will review and verify that tide and water level data generated by the Texas A&M Corpus Christi's Conrad Blucher Institute to prove that the data was collected in accordance with the National Oceanic and Atmospheric Administrative (NOAA) standards and procedures. Data from the TCOON stations is used identify the boundary between state and private ownership of submerged land, for approving coastal erosion and beach nourishment projects, for calculating acreage of submerged land tracts for mineral leasing, for identifying and defining the public beach, and for modeling oil spill projections.

Pursuant to §2254.029 and §2254.031 of the Texas Government Code, the GLO is seeking to renew its contract for consulting services relating to the review and verification of tide and water level data from TCOON stations for a two-year period beginning September 1, 2009 through August 31, 2011.

It is the intent of the GLO to award this contract to Mr. Douglas Martin subject to the approval of the Governor's Office of Budget and Planning as required by Texas Government Code §2254.028. Mr. Martin has previously provided these consulting services to the GLO with respect to the TCOON program. Further information may be obtained by contacting Kathy Smartt, Texas General Land Office, 1700 N. Congress Avenue, Austin, Texas 78701-1495, telephone (512) 475-1552.

TRD-200903924

Trace Finley

Deputy Commissioner, Policy and Governmental Affairs

General Land Office

Filed: September 2, 2009

Texas Health and Human Services Commission

Notice of Adopted Reimbursement Rates

Adopted Rates. As the single state agency for the state Medicaid program, the Texas Health and Human Services Commission (HHSC) has adopted the following per diem reimbursement rates for non-state operated Intermediate Care Facilities for Persons with Mental Retardation (ICF/MR). The public hearing notice was published in the July 17, 2009, issue of the *Texas Register* (34 TexReg 4768) and the proposed rates were published in the August 21, 2009, issue of the *Texas Register* (34 TexReg 5807).

Payment rates are adopted to be effective September 1, 2009, as follows:

Per Diem Rates for Non-State Operated ICF/MR Services by Level of Need and Facility Size

Level of Need	8 or Less Beds	9-13 Beds	14+ Beds
1 Intermittent	\$148.84	\$121.78	\$ 115.87
5 Limited	\$165.85	\$138.30	\$ 124.28
8 Extensive	\$188.63	\$163.96	\$ 140.10
6 Pervasive	\$230.98	\$196.28	\$ 180.19
9 Pervasive +	\$419.01	\$394.31	\$ 398.33

Methodology and Justification. The adopted rates in the chart above were determined in accordance with the rate setting methodology set out at 1 Texas Administrative Code (TAC) §355.456 (relating to the Rate Setting Methodology). These rates were subsequently adjusted in accordance with 1 TAC §355.101 (relating to Introduction) and §355.109 (relating to Adjusting Reimbursement When New Legislation, Regulations or Economic Factors Affect Costs). The rate changes are being made in accordance with the 2010-11 General Appropriations Act (Article II, S.B. 1, 81st Legislature, Regular Session, 2009) which appropriated \$4.5 million general revenue for the State Fiscal Year 2010-11 biennium for Medicaid rate increases for the ICF/MR program.

TRD-200903965

Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

Filed: September 9, 2009

◆ ◆ ◆
Department of State Health Services

Licensing Actions for Radioactive Materials

The Department of State Health Services has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables. The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout TX" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Allen	Texas Health Presbyterian Hospital - Allen	L05765	Allen	18	08/19/09
Allen	Texas Health Presbyterian Hospital - Allen	L05765	Allen	19	08/26/09
Austin	Austin Radiological Association	L00545	Austin	157	08/17/09
Austin	Columbia St. David's Healthcare System L.P. dba South Austin Hospital	L03273	Austin	86	08/24/09
Austin	St. David's Healthcare Partnership L.P. L.L.P. dba North Austin Medical Center	L04910	Austin	83	08/17/09
Austin	ARA Imaging	L05862	Austin	47	08/17/09
Austin	Westlake Surgical L.P. dba The Hospital at Westlake Medical Center	L06234	Austin	01	08/14/09
Austin	Westlake Surgical L.P. dba The Hospital at Westlake Medical Center	L06234	Austin	02	08/21/09
Austin	Applied Nanotech Inc.	L06277	Austin	00	08/26/09
Azle	Texas Health Harris Methodist Hospital - Azle	L03230	Azle	30	08/26/09
Cleburne	Texas Health Harris Methodist Hospital - Cleburne	L02039	Cleburne	40	08/17/09
Corpus Christi	Cardinal Health	L04043	Corpus Christi	40	08/25/09
Corpus Christi	Christus Health System dba Christus Spohn Hospital Corpus Christi Memorial	L00265	Corpus Christi	90	08/26/09
Cypress	North Cypress Medical Center Operating Company L.L.C. dba North Cypress Medical Center	L06020	Cypress	15	08/18/09
Dallas	Methodist Hospitals of Dallas Radiology Svcs.	L00659	Dallas	67	08/21/09
Dallas	Mallinckrodt Inc.	L03580	Dallas	66	08/17/09
Dallas	Medi Physics Inc. dba G.E. Healthcare	L05529	Dallas	28	08/21/09
Dallas	Baylor Radiosurgery Center dba Baylor University Medical Center	L05842	Dallas	14	08/19/09
Dallas	Crown Imaging L.L.C.	L06223	Dallas	01	08/21/09
Deer Park	Oxy Vinyls L.P.	L03200	Deer Park	14	08/18/09
El Paso	Center for Integrative Cancer Medicine P.A.	L05880	El Paso	06	08/17/09
El Paso	Center for Integrative Cancer Medicine P.A.	L05880	El Paso	07	08/25/09
Fort Worth	University of North Texas Health Science Center of Fort Worth	L02518	Fort Worth	36	08/21/09
Fort Worth	Radiology Associates	L03953	Fort Worth	48	08/14/09
Fort Worth	Radiology Associates	L03953	Fort Worth	49	08/19/09
Houston	Rice University	L04639	Houston	11	08/19/09
Houston	Methodist Health Centers dba Methodist Willowbrook Hospital	L05472	Houston	29	08/17/09
Houston	The Univ. of Texas M.D. Anderson Cancer Ctr.	L06227	Houston	03	08/19/09
Houston	The Univ. of Texas M.D. Anderson Cancer Ctr.	L06227	Houston	04	08/21/09
Houston	Cardinal Health	L01911	Houston	141	08/25/09
Houston	Houston Heart Clinic	L05671	Houston	06	08/25/09
Houston	Centronics L.L.C.	L06164	Houston	01	08/26/09
Irving	Baylor Medical Center at Irving dba Irving Healthcare System	L02444	Irving	78	08/26/09
Jacksonville	Mother Frances Hospital - Jacksonville	L05362	Jacksonville	27	08/26/09
Lamesa	Dawson County Hospital District dba Medical Arts Hospital	L06244	Lamesa	02	08/26/09
Lubbock	Covenant Medical Center	L00483	Lubbock	141	08/26/09

AMENDMENTS TO EXISTING LICENSES ISSUED (Continued):

Location	Name	License #	City	Amend- ment #	Date of Action
North Richland Hills	Columbia North Hills Hospital Subsidiary L.P. dba North Hills Hospital	L02271	North Richland Hills	60	08/17/09
Pampa	Titan Specialties Ltd.	L04920	Pampa	15	08/20/09
Paris	Physician Reliance Network Inc. dba Paris Regional Cancer Center	L04664	Paris	20	08/25/09
Queen City	International Paper Company	L01686	Queen City	35	08/18/09
Richardson	Medical Edge Healthcare Group P.A. dba PET/CT Center of Richardson	L05688	Richardson	11	08/21/09
San Antonio	VHS San Antonio Partners L.L.C. dba Baptist Health System	L00455	San Antonio	189	08/14/09
San Antonio	VHS San Antonio Partners L.L.C. dba Baptist Health System	L00455	San Antonio	190	08/19/09
San Antonio	The University of Texas Health Science Center at San Antonio	L01279	San Antonio	120	08/17/09
San Antonio	Christus Santa Rosa Health Care	L02237	San Antonio	107	08/17/09
San Antonio	Accord Medical Management L.P. dba Nix Health Care System	L03531	San Antonio	29	08/24/09
San Antonio	Medi-Physics Inc. dba G.E. Healthcare	L04764	San Antonio	37	08/17/09
San Antonio	U.T. Medicine San Antonio	L05410	San Antonio	12	08/17/09
San Antonio	Heart Hospital of San Antonio L.P. dba Texasan Heart Hospital	L05722	San Antonio	12	08/21/09
San Antonio	Christus Santa Rosa Health Care	L02237	San Antonio	108	08/26/09
San Antonio	VHS San Antonio Imaging Partners L.P. dba Baptist M&S Imaging Centers	L04506	San Antonio	70	08/25/09
San Antonio	Cardiovascular Associates of San Antonio P.A.	L04996	San Antonio	15	08/24/09
San Antonio	South Texas Radiology Imaging Centers	L00325	San Antonio	177	08/27/09
San Antonio	Christus Santa Rosa Health Care	L02237	San Antonio	109	08/28/09
San Antonio	U.T. Medicine San Antonio	L05410	San Antonio	13	08/31/09
Sugarland	Schlumberger Technology Corporation	L01833	Sugarland	155	08/25/09
Sulphur Springs	Medical Surgical Clinic of Sulphur Springs dba Sulphur Springs Family Healthcare Assoc.	L05701	Sulphur Springs	17	08/17/09
Texarkana	Advanced Cardiology of Texarkana	L05976	Texarkana	02	08/17/09
Texarkana	Advanced Cardiology of Texarkana	L05976	Texarkana	03	08/21/09
Texarkana	Christus Health Ark-La-Tex dba Christus Saint Michael Health System	L04805	Texarkana	22	08/28/09
The Woodlands	Opexa Therapeutics Inc.	L05592	The Woodlands	10	08/25/09
Throughout TX	Desert Industrial X-Ray L.P.	L04590	Abilene	99	08/26/09
Throughout TX	Team Industrial Services Inc.	L00087	Alvin	210	08/25/09
Throughout TX	Texas Department of Transportation	L00197	Austin	147	08/20/09
Throughout TX	Weld Spec Inc.	L05426	Beaumont	87	08/19/09
Throughout TX	NDE Solutions L.L.C.	L05879	College Station	24	08/13/09
Throughout TX	Bonded Inspections Inc.	L00693	Garland	82	08/18/09
Throughout TX	Marco Inspection Services L.L.C.	L06072	Kilgore	23	08/25/09
Throughout TX	Acuren Inspection Inc.	L01774	La Porte	257	08/19/09
Throughout TX	Acuren Inspection Inc.	L01774	La Porte	258	08/24/09
Throughout TX	City of Laredo	L06266	Laredo	01	08/24/09
Throughout TX	Techcorr USA L.L.C.	L05972	Palestine	66	08/18/09
Throughout TX	Texas Gamma Ray L.L.C.	L05561	Pasadena	90	08/17/09
Throughout TX	GCT Inspection Inc.	L02378	South Houston	106	08/25/09
Tomball	Northwest Houston Heart Center	L05958	Tomball	04	08/25/09
Waco	Hillcrest Baptist Medical Center	L00845	Waco	89	08/21/09

RENEWAL OF LICENSES ISSUED:

Location	Name	License #	City	Amend- ment #	Date of Action
Longview	Longview Medical Center L.P. dba Longview Regional Medical Center	L02882	Longview	41	08/26/09
Port Arthur	Motiva Enterprises L.L.C.	L05211	Port Arthur	11	08/18/09
San Marcos	Texas State University - San Marcos	L03321	San Marcos	29	08/18/09
Throughout TX	City of Weatherford	L04571	Weatherford	10	08/13/09

TERMINATIONS OF LICENSES ISSUED:

Location	Name	License #	City	Amend- ment #	Date of Action
Odessa	Flint Hills Resources L.P.	L00547	Odessa	46	08/14/09
San Antonio	Medical Center Ophthalmology Associates	L01343	San Antonio	21	08/19/09

In issuing new licenses, amending and renewing existing licenses, or approving license exemptions, the Department of State Health Services (department), Radiation Safety Licensing Branch, has determined that the applicant has complied with the applicable provisions of Title 25 Texas Administrative Code (TAC), Chapter 289, regarding radiation control. In granting termination of licenses, the department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC, Chapter 289. In denying the application for a license, license renewal or license amendment, the department has determined that the applicant has not met the applicable requirements of 25 TAC, Chapter 289.

This notice affords the opportunity for a hearing on written request of a person affected within 30 days of the date of publication of this notice. A person affected is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. A person affected may request a hearing by writing Richard A. Ratliff, Radiation Program Officer, Department of State Health Services, Radiation Material Licensing - MC 2835, P.O. Box 149347, Austin, Texas 78714-9347. For information call (512) 834-6688.

TRD-200903950
Lisa Hernandez
General Counsel
Department of State Health Services
Filed: September 8, 2009

Texas Higher Education Coordinating Board

Request for Proposals: To Support Centers for Teacher Education at Component Institutions of the Texas Association of Developing Colleges

PURPOSE:

The Texas Higher Education Coordinating Board (hereinafter referred to as THECB) is soliciting offers from organizations (hereinafter referred to as Consultant) for consulting services to support Centers for Teacher Education at component institutions of the Texas Association of Developing Colleges (hereinafter referred to as TADC).

The ultimate objectives of this Request for Proposal (hereinafter referred to as RFP) are to:

- 1) Facilitate and coordinate a collaborative strategic planning process to involve TADC college administration in planning for collaborative distance education, upgrading of technology, curriculum development and redesign and improvement of TExES/ExCET preparation.
- 2) Work in collaboration with the Texas Higher Education Coordinating Board and TADC college administration to identify training needs of

college faculty in the centers for teacher education in the areas related to distance education, curriculum development and improvement of TExES/ExCET preparation.

3) Facilitate and coordinate college administration and faculty professional development workshops to meet areas of need for delivery of distance education, curriculum development and redesign and improvement of TExES/ExCET preparation.

4) Report progress in TADC teacher education enrollment, level of participation in the distance education program, successful student placements, and other evaluative measures.

AWARD OF CONTRACT:

Contract will be negotiated with an entity that is selected from among the Applicants who submit a Proposal under a Request for Proposals and that are determined through the evaluation process to have a successful Proposal. Submission of a Proposal confers no rights of Applicant to an award or to a subsequent Contract, if there is one. The issuance of this RFP does not guarantee that a Contract will ever be awarded. THECB reserves the right to amend the terms and provisions of the RFP, negotiate with Applicant, add, delete, or modify the Contract and/or the terms of Proposal submitted, extend the deadline for submission of Proposal, or withdraw the RFP entirely for any reason solely at THECB's discretion. An individual Proposal may be rejected if it fails to meet any requirement of this RFP. THECB may seek clarification from Applicant at any time, and failure to respond within a reasonable time frame is cause for rejection of a Proposal. An individ-

ual Proposal may be rejected if it fails to meet any requirement of the RFP.

INQUIRIES:

All inquiries shall be directed to Kendra Horn, at Kendra.Horn@theeb.state.tx.us. Applicant must not discuss a Proposal(s) with any other THECB employee unless authorized by the Points of Contact. Questions must be submitted in writing and received no later than September 23, 2009 at 5:00 p.m. C.D.T. All responses by THECB must be in writing in order to be binding. Any information deemed by THECB to be important and of general interest or which modify requirements shall be sent to all recipients of the RFP in the form of an addendum.

CLOSING DATE:

September 28, 2009

TRD-200903921

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

Filed: September 2, 2009

Texas Department of Insurance

Company Licensing

Application for incorporation to the State of Texas by MDRX HEALTH AND LIFE INSURANCE COMPANY, a domestic life, accident and/or health company. The home office is in Austin, Texas.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701.

TRD-200903962

Gene C. Jarmon

General Counsel

Texas Department of Insurance

Filed: September 9, 2009

Texas Lottery Commission

Instant Game Number 1221 "\$100,000 Super 7's"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1221 is "\$100,000 SUPER 7'S". The play style is "other".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1221 shall be \$10.00 per ticket.

1.2 Definitions in Instant Game No. 1221.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 8, 9, 10, 11, 12, 13, 14, 15, 16, 18, 19, 20, 21, 22, 23, 24, 25, 26, 28, 29, 30, 31, 32, 33, 34, 35, 36, 38, 39, 40, SEVEN SYMBOL, SUN SYMBOL, SUPER SYMBOL, \$10.00, \$20.00, \$50.00, \$100, \$200, \$500, \$1,000, \$2,500 and \$100,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1221 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWV
26	TWSX
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRV
36	TRSX
38	TRET
39	TRNI
40	FRTY
7	SVN
SUN SYMBOL	WIN\$50
SUPER SYMBOL	WINX10
\$10.00	TEN\$
\$20.00	TWENTY
\$50.00	FIFTY
\$100	ONE HUND
\$200	TWO HUND
\$500	FIV HUND
\$1,000	ONE THOU
\$2,500	25 HUND
\$100,000	HUN THOU

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of \$10.00 or \$20.00.

G. Mid-Tier Prize - A prize of \$50.00, \$100, \$200 or \$500.

H. High-Tier Prize - A prize of \$1,000, \$2,500 or \$100,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1221), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 050 within each pack. The format will be: 1221-0000001-001.

K. Pack - A pack of "\$100,000 SUPER 7'S" Instant Game tickets contains 50 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). Ticket back 001 and 050 will both be exposed.

L. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "\$100,000 SUPER 7'S" Instant Game No. 1221 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "\$100,000 SUPER 7'S" Instant Game is determined once the latex on the ticket is scratched off to expose 50 (fifty) Play Symbols. If a player reveals a "7" play symbol in the play area, the player wins the PRIZE shown for that symbol. If a player reveals a "sun" play symbol, the player wins \$50 instantly! If a player reveals a "SUPER" play symbol, the player wins 10 times the PRIZE shown for that symbol! No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 50 (fifty) Play Symbols must appear under the latex overprint on the front portion of the ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 50 (fifty) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 50 (fifty) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 50 (fifty) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets in a pack will not have identical play data, spot for spot.

B. No more than four (4) matching non-winning prize symbols will appear on a ticket.

- C. No duplicate non-winning play symbols on a ticket.
- D. Non-winning prize symbols will never be the same as the winning prize symbol(s).
- E. No prize amount in a non-winning spot will correspond with the play symbol (i.e. 10 and \$10).
- F. The "SUPER" (win x 10) play symbol will only appear on intended winning tickets and only as dictated by the prize structure.
- G. The "SUN" (win \$50) play symbol will always be used with the \$50 prize symbol.
- H. The "SUN" (win \$50) play symbol will be used for all \$50 prize wins with the exception of prize tier 17.
- I. The top prize symbol will appear on every ticket unless otherwise restricted.

2.3 Procedure for Claiming Prizes.

A. To claim a "\$100,000 SUPER 7'S" Instant Game prize of \$10.00, \$20.00, \$50.00, \$100, \$200 or \$500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required to pay a \$50.00, \$100, \$200 or \$500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "\$100,000 SUPER 7'S" Instant Game prize of \$1,000, \$2,500 or \$100,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "\$100,000 SUPER 7'S" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

- 1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;
- 2. delinquent in making child support payments administered or collected by the Attorney General;

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "\$100,000 SUPER 7'S" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "\$100,000 SUPER 7'S" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 4,080,000 tickets in the Instant Game No. 1221. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1221 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$10	326,400	12.50
\$20	571,200	7.14
\$50	85,000	48.00
\$100	62,458	65.32
\$200	7,854	519.48
\$500	1,904	2,142.86
\$1,000	170	24,000.00
\$2,500	34	120,000.00
\$100,000	6	680,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.87. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1221 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1221, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-200903967

Kimberly L. Kiplin

General Counsel

Texas Lottery Commission

Filed: September 9, 2009



North East Texas Regional Mobility Authority

Notice of Availability of Request for Qualifications for Development of the Toll 49 Project Segment 3B

The North East Texas Regional Mobility Authority ("NET RMA"), a political subdivision, is soliciting statements of interest and qualifications from entities interested in pursuing the development of the Toll 49 Segment 3B Project in Smith County, Texas through a design/build comprehensive development agreement ("D/B CDA"). Toll 49 is a proposed corridor in North East Texas connecting Tyler, Longview and Marshall and is comprised of three previously unrelated projects: Loop 49, the proposed outer loop around Tyler, Texas, which has been in the

planning stages for over 30 years; the Longview Outer Loop, a project that has conceptually been known as the East Texas Hourglass, with connection to Marshall and the US 59 corridor; and the Lindale Relief Route, an extension of Toll 49 from I-20 west of Tyler to US 69 north of Lindale. Toll 49 has been broken into segments for further project development. Segment 3B, which is the subject of this procurement, extends 9.96 miles from approximately IH 20 at FM 849 to SH 31, 2 miles east of FM 2661 (the "Project"). The entity selected for the Project, if any, will be responsible for the design and construction of the Project through a D/B CDA.

The request for qualifications will be available on or about September 14, 2009. Copies may be obtained from the NET RMA website at <http://www.netrma.org>, or by contacting the NET RMA at (903) 509-1552 ext. 228. Periodic updates, addenda, and clarifications may be posted on the NET RMA website and interested parties are responsible for monitoring the website accordingly.

There will be a pre-proposal conference for interested parties at 1:00 p.m. CST on September 21, 2009, at First Baptist Tyler, South Campus, 1001 FM 2813, Tyler, Texas. Attendance is not a condition of submitting a proposal.

Final responses must be received by the NET RMA by 4:00 p.m. CST on October 14, 2009, to be eligible for consideration. Each proposing entity will be evaluated based on the criteria and process set forth in the RFQ.

Questions concerning this RFQ may be submitted via e-mail to Mike Battles, P.E. at wmbattles@pbsj.com or in writing to: NET RMA, c/o Mike Battles, P.E., 909 ESE Loop 323, Suite 360, Tyler, Texas 75701. All questions must be received by 5:00 p.m. CST on September 28, 2009.

TRD-200903968

Jeff Austin, III
Chairman
North East Texas Regional Mobility Authority
Filed: September 9, 2009

Public Utility Commission of Texas

Public Notice of Workshop

The staff of the Public Utility Commission of Texas (commission) will hold a workshop on Monday, September 28, 2009 to discuss issues related to the strawman rule published in Project Number 35246. The workshop will begin at 10:00 a.m. in the Commissioners' Hearing Room, located on the 7th floor of the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. Project Number 35246, *Rulemaking Regarding P.U.C. Substantive Rules, Chapter 26, Subchapter E (Certification, Licensing and Registration - §§26.101, 26.102, 26.103, 26.107, 26.109, 26.111, 26.113 and 26.114) and §26.89* has been established for this proceeding.

This notice is not a formal notice of proposed rulemaking; however, the comments of persons participating in the workshop will assist the commission in developing policy changes or determining the necessity for appealing existing rules and adopting new rules to address certification, licensing and registration requirements for telecommunications providers.

Questions concerning the workshop or this notice should be referred to Shelah Cisneros, Legal Division, at (512) 936-7265. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-200903951
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: September 8, 2009

Texas Department of Transportation

Notice of Public Hearing on Proposed Restrictions on Use of State Highway - IH 35, Bell and Williamson Counties

The Texas Department of Transportation (department) will conduct a public hearing to receive comments on a proposed restriction initiated by the department establishing lane use restrictions for certain classes of vehicles on Interstate Highway 35 in Bell and Williamson counties.

In accordance with Transportation Code, §545.0651 and 43 TAC §§25.601 - 25.604, the department is proposing to initiate a lane use restriction applicable to trucks, as defined in Transportation Code, §541.201, with three or more axles, and to truck tractors, also as defined in Transportation Code, §541.201, regardless of whether the truck tractor is drawing another vehicle or trailer. The proposed restriction would prohibit those vehicles from using the left or inside lane on Interstate Highway 35 in both directions from approximately 0.592 miles south of Farm-to-Market Road 2115 through Bell and Williamson counties to 1.297 miles south of the Bell/Williamson County line. This proposed restriction will connect with a current 104-mile truck lane restriction that is in effect for Interstate Highway 35 between 1.297 miles south of the Bell/Williamson County line and approximately 1.280 miles south of Loop 1604 in the city of Live Oak, Bexar County.

The proposed restrictions would apply 24 hours a day, 7 days a week, and would allow the operation of those vehicles in a prohibited traffic

lane for the purposes of passing another vehicle or entering or exiting the highway.

In accordance with 43 TAC §25.604, the department will evaluate the impact of the proposed restriction's compliance with the requirements of Transportation Code, §545.0651 and 43 TAC §§25.601 - 25.604, and will hold a public hearing to receive comments on the proposed restriction. The hearing will be held at 6:30 p.m. on September 29, 2009 at the following location:

Texas Department of Transportation
Belton Area Office
410 W. Loop 121
Belton, TX 76513

All interested citizens are invited to attend the hearing and to provide input. Those desiring to make official comments may register starting at 6:00 p.m. Oral and written comments may be presented at the public hearing and written comments may be submitted by regular postal mail during the 30-day public comment period. Written comments may be submitted to Richard J. Skopik, P.E., District Engineer, Waco District, Texas Department of Transportation, 100 South Loop Drive, Waco, Texas 76704-2858. The deadline for receipt of written comments is 5:00 p.m. on October 19, 2009.

Persons with disabilities who plan to attend the public hearing and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing-impaired, readers, large print, or Braille, are requested to contact Mike Rhodes at (254) 867-2739 at least two business days prior to the hearing so that appropriate arrangements can be made. For more information concerning the public hearing, please contact Larry Colclasure at (254) 867-2800.

TRD-200903959
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: September 9, 2009

Public Notice - Disadvantaged Business Enterprise Goals, Fiscal Year 2010, Date of Notice September 18, 2009

In accordance with Title 49, Code of Federal Regulations, Part 26, recipients of federal-aid funds authorized by the Transportation Equity Act for the 21st Century (TEA 21) are required to establish Disadvantaged Business Enterprise (DBE) programs. Title 49, C.F.R. §26.45 requires the recipients of federal funds, including the Texas Department of Transportation (department), to set overall goals for DBE participation in U. S. Department of Transportation assisted contracts. As part of this goal-setting process, the department is publishing this notice to inform the public of the proposed overall goals and to provide instructions on how to obtain copies of documents explaining the rationale for each goal.

The proposed Fiscal Year 2010 DBE goals are 11.5% for highway design and construction, 12.9% for aviation design and construction, and 2.8% for public transportation. The proposed goals and goal-setting methodology for each is available for inspection between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday, for thirty (30) days following the date of this notice. The information may be viewed in the office of the Texas Department of Transportation, Office of Civil Rights, 200 East Riverside Drive, Austin, Texas 78704.

Office of Civil Rights staff will also be available at a public comment meeting on October 2, 2009, from 1:00 p.m. to 3:00 p.m. at the

Texas Department of Transportation, Office of Civil Rights, 200 East Riverside Drive, Austin, Texas 78704. Department staff will provide an overview of the goal-setting process and the FY 2010 DBE Goal Methodology. The public is invited to present oral or written comments at the meeting. Oral comments will be limited to two (2) minutes for each person who comments. This comment time may be extended if the number of persons who wish to comment can do so within the time allowed for this meeting.

The department will accept written comments on the DBE goals at the meeting and for forty five (45) days from the date of this notice. Com-

ments may be sent to Eli Lopez, Office of Civil Rights, 125 East 11th Street, Austin, Texas 78701; (512) 486-5511; Fax: (512) 486-5509; email: elopez3@dot.state.tx.us.

TRD-200903960

Joanne Wright

Deputy General Counsel

Texas Department of Transportation

Filed: September 9, 2009

◆ ◆ ◆

How to Use the Texas Register

Information Available: The 14 sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules - sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules - notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Review of Agency Rules - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 33 (2008) is cited as follows: 33 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "33 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 33 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code*, section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online through the Internet. The address is: <http://www.sos.state.tx.us>. The *Register* is available in an .html version as well as a .pdf (portable document format) version

through the Internet. For website subscription information, call the Texas Register at (512) 463-5561.

Texas Administrative Code

The *Texas Administrative Code (TAC)* is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at <http://www.sos.state.tx.us/tac>. The following companies also provide complete copies of the TAC: Lexis-Nexis (800-356-6548), and West Publishing Company (800-328-9352).

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Table of TAC Titles Affected*. The table is published cumulatively in the blue-cover quarterly indexes to the *Texas Register*. If a rule has changed during the time period covered by the table, the rule's *TAC* number will be printed with one or more *Texas Register* page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

40 TAC §3.704.....950, 1820

The *Table of TAC Titles Affected* is cumulative for each volume of the *Texas Register* (calendar year).